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PRECEDENTS AND FORMS

WITH REFERENCES AND ADDITIONS TO

"A TREATISE ON THE LAW OF SETTLEMENTS."

BY

JOHN SAVILL VAIZEY,

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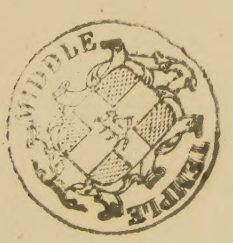

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A COLLECTION OF

PRECEDENTS AND FORMS.

PREFACE.

THIS is the volume referred to in the preface to my Treatise on Settlements published last year.

I have not attempted to furnish a large number of Precedents, but only a collection of typical instruments, either creating settlements, or effecting any object in aid of their creation or maintenance, or putting an end to them. There are, indeed, one or two which either relate to a practice nearly obsolete, as the Settlement of Renewable Leaseholds; or are rarely needed, such as the Settlement of Diamonds to accompany a Title of Honour, but even these are typical. For the most part, however, the precedents printed may be described as "common forms" in the sense of being forms applicable to frequently occurring needs.

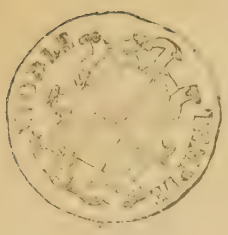
To my friends who have assisted me in preparing these Precedents I have to express my gratitude: especially to Mr. G. H. Blakesley; hardly less to Mr. A. H. Dennis,—both of the Chancery Bar. To them is due much of such merit as there may be in the Precedents,—though, as I need hardly say, the responsibility for faults is wholly mine.

In a supplemental note there will be found, preceded by references to the appropriate parts of the Treatise, notes of the Acts of Parliament and decided

cases which since the points of time down to which legislation and decision had been stated in the Treatise or in the additions prefixed to it have respectively passed and been reported in the *English and Irish Law Reports*, *The Weekly Reporter*, *The Law Times Reports*, *The Weekly Notes*, and *The Solicitors' Journal*, down to the date of this preface.

I have also added a note on those attempts at legislation in the past session which, had they proved successful, would have affected the subject of Settlements.

LINCOLN'S INN,
March 7th, 1888



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PRECEDENTS.

I.

SETTLEMENT ON MARRIAGE *of the Freehold* LAND *of the intended* HUSBAND; *Life Estate for Husband;* PIN-MONEY *and* JOINTURE ANNUITIES *for* WIFE; *Portions Term of five hundred years; Remainders to* ISSUE *in Strict Settlement; Restriction of Trustees' Liability for Arrears of Pin-money; Accumulation and Investment of Surplus Rents during Minorities; Trusts of the Term, and Trusts and Powers of and relating to the Portions and to raise Maintenance Money; Powers to the intended* HUSBAND *to* JOINTURE *any Future* WIFE *and to Charge with Portions for Children of a Future Marriage; Limit of Power; Covenant to surrender Copyholds, and Assignments of Leaseholds and of Plate and other Chattels, upon Trusts corresponding with the uses of the Freeholds; Trustees' Clauses; Qualification of Implied Covenants for Title.*

THIS INDENTURE, made the day of , BETWEEN [*intended husband*], of etc., of the first part; [*intended wife*], of etc., of the second part; and *A* of etc., and *B* of etc. (who are hereinafter designated in some places by their names, and in others, together with such other persons as are hereinafter in that behalf described, by the words "the trustees of this settlement") of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS the said [*intended husband*] is seised of or entitled to the manors, messuages, farms, lands, tenements and hereditaments hereinafter described and expressed to be hereby granted for an estate of inheritance in fee simple in possession free from incumbrances except as hereinafter mentioned, and of or to the copyhold or customary tenements hereinafter described and covenanted to be surrendered for estates of inheritance, according to the customs of the manors

Parties (*a*).

Recital of intended marriage,

—of husband's title to freeholds and copyholds,

(*a*) As to parties and recitals, see Treatise, 278—284.

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whereof the last-mentioned tenements are held respectively, in possession, subject to the rents, heriots and services therefor due and of right accustomed respectively, but free

of leaseholds, from all other incumbrances; AND WHEREAS by an indenture bearing date the day of , 1763, and expressed to be made between [*lessor*] of the one part and [*lessee*] of the other part, ALL, etc. [*parcels as described in the lease*] with their appurtenances were expressed to be demised by the said [*lessor*] unto the said [*lessee*], his executors, administrators, and assigns, from the day of , 1763, for a term of 300 years, subject to the payment of the yearly rent of £ by the indenture now in recital reserved, and to the performance of the lessees' covenants therein contained; AND WHEREAS by virtue of divers mesne assignments, events, and acts in the law, and ultimately by virtue of an indenture bearing date the day of , 18 , and expressed to be made between [*assignor*] of the one part and the said [*intended husband*] of the other part, the said hereditaments described in and expressed to be demised by the said indenture of the day of , 1763, became vested in the said [*intended husband*] for the residue of the said term of 300 years, subject to the payment of the rent by the last-mentioned indenture reserved and to the performance of the covenants by the lessee therein contained, but free from all other incum-

and to chattels, brances; AND WHEREAS the said [*intended husband*] is also possessed of and absolutely entitled to the plate, furniture, pictures, books, prints, linen, china, glass, and other articles of domestic use or ornament hereinafter described and ex-

and of agreement to settle. pressed to be hereby assigned; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*intended husband*] should convey, covenant to surrender and assign respectively the said manors and other hereditaments, tenements and chattels whereof or whereto respectively he is so seised and possessed or entitled as aforesaid To the several uses, upon and for the several trusts, intents, and purposes, and under and subject to the several powers, provisoes, agreements, and declarations hereinafter expressed

Grant of freeholds (*a*). concerning the same respectively; NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage, the said [*intended husband*] as beneficial owner (*b*), DOTH by these presents

(*a*) Treatise, 288 (*b*) *Ib.* 321.

grant and convey unto the said *A* and *B* and their heirs ALL THOSE [*parcels*] (*a*), TO HAVE AND TO HOLD the said manors and hereditaments and all other the premises intended to be hereby granted with their appurtenances unto the said *A* and *B* and their heirs, TO THE USE of the said [*intended husband*] and his heirs, until the said intended marriage shall be solemnised; and immediately after the solemnisation thereof, TO THE USE and intent that thenceforth the trustees of this settlement shall, during the joint lives of the said [*intended husband*] and [*intended wife*], by and out of the rents and profits of the said manors, hereditaments and premises hereby granted, receive the clear yearly rentcharge or sum of £200 sterling, to be paid by half-yearly payments, on the day of and the day of in every year, AND SHALL pay the same yearly rentcharge to the said [*intended wife*] for her sole and separate use, but without power to anticipate or alienate the same (*d*); AND subject to and after payment of the said yearly rentcharge, and to the powers by the Conveyancing and Law of Property Act 1881 given for the recovery thereof, and to every if any term of years which may be created by virtue of one of the same powers (*e*), TO THE USE of the said [*intended husband*] and his assigns during his life without impeachment of waste (*f*); AND immediately after the death of the said [*intended husband*] if the said [*intended wife*] shall survive him, TO THE USE AND INTENT that the said [*intended wife*] and her assigns shall thenceforth yearly during her life receive by and out of the rents and profits of the said manors, hereditaments, and premises hereby granted, a clear yearly rentcharge or sum of £800 sterling, the same to be in full for her jointure and in bar of dower and freebench, and to be paid to the said [*intended wife*], her executors, administrators, or assigns by half-yearly payments on the day of and the day of in every year, the first payment thereof to be

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To hold

To use of husband till marriage (*b*).

Pin money (*c*).

To use of husband for life.

Jointure rentcharge (*g*).

(*a*) As to "general words" and "all the estate," see Treatise, 289.
(*b*) Treatise, 334.
(*c*) *Ib.* 862, 931.
(*d*) The pin money might be effectually limited to the wife herself with a restraint on anticipation (45 & 46 Vict. c. 75, ss. 1, 19); but, if the husband should fail to pay, the means of compelling payment can be less invidiously used by trustees than by her. As to separate use, see Treatise, 747; as to restraint on anticipation, 826; as to apportionment, 1004.
(*e*) Treatise, 937.
(*f*) *Ib.* 165, 863, 890, 896.
(*g*) *Ib.* As to rentcharges, 931; as to jointure, 974.

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made on such of the same days as shall first happen after the death of the said [*intended husband*]; AND also (whether the said [*intended wife*] shall die in the lifetime of the said [*intended husband*] or shall survive him, but if she shall survive him subject to the said yearly rentcharge or sum of £800 and to the powers by the Conveyancing and Law of Property Act 1881 (*a*) given for the recovery thereof and to every if any term of years which may be created by virtue of one of the same powers), to the uses hereinafter expressed (that is to say), TO THE USE of the said *A* and *B* during the term of 500 years next ensuing the death of the said [*intended husband*] without impeachment of waste, UPON THE TRUSTS and for the intents and purposes and subject to the provisoes, agreements and declarations hereinafter expressed concerning the same term; AND from and immediately after the determination of the said term of 500 years, and in the meantime subject thereto and to the trusts thereof (*c*), TO THE USE of the first and all other sons of the said [*intended husband*] by the said [*intended wife*] successively, as they shall be in priority of birth, and of the heirs male of the bodies of those sons respectively; and in default of such issue, TO THE USE of the first and all other sons of the said [*intended husband*] by the said [*intended wife*] successively as they shall be in priority of birth and of the heirs of the bodies of those sons respectively; AND in default of such issue TO THE USE of the daughter if there shall be one daughter and no more of the said [*intended husband*] by the said [*intended wife*] and the heirs of the body of that daughter; But if there shall be more than one daughter of the said [*intended husband*] by the said [*intended wife*], then TO THE USE of all the daughters of the said [*intended husband*] by the said [*intended wife*] and the heirs of the bodies of those daughters respectively as tenants in common in equal shares; AND if there shall be a failure of issue of the body or bodies of any such daughter or daughters as aforesaid, then as to the share or shares as well surviving or accruing as original of any such daughter or daughters whose issue shall so fail as aforesaid TO THE USE of the others or other of the said daughters and the heirs of their bodies respectively or of her body, equally to be divided among such

To use of trustees for 500 years (*b*)

—of sons successively in tail male (*d*)

—of sons successively in tail

—of daughters in common in tail.

(*a*) Treatise, 937.
(*b*) *Ib.* 1099.
(*c*) *Ib.* 1142.
(*d*) As to remainders to children usual in strict settlements on marriage, see Treatise, 1169: as to estates tail, *ib.* 1178; as to cross remainders, *ib.* 1183.

daughters as last aforesaid, if more than one, as tenants in common ; And if all except one of the daughters of the said [*intended husband*] by the said [*intended wife*] shall die without issue, then as to the whole of the premises, To THE USE of that one daughter and the heirs of her body (*a*) ; PROVIDED ALWAYS, and it is hereby agreed and declared that the trustees of this settlement shall not nor shall any of them at any time be bound, although they shall be at liberty, to compel or require payment of or to receive the said yearly rentcharge of £200 or any part thereof, unless they shall have been requested in writing by the said [*intended wife*] to receive the same rentcharge or that part thereof; AND THAT the trustees of this settlement shall not nor shall any of them be liable to answer for the consequences of any neglect to receive any arrears of the said yearly rentcharge of £200 unless within twelve calendar months next following the date at which such arrears as aforesaid became payable, the said [*intended wife*] shall have in writing requested the same trustees of this settlement to receive the same yearly rentcharge; AND THAT all arrears of the same rentcharge which neither the trustees of this settlement shall have received nor the said intended wife shall in manner aforesaid have requested the trustees of this settlement to receive shall sink into the inheritance of the said manors and hereditaments so charged with the payment of the said rentcharge as aforesaid (*c*); AND IT IS HEREBY AGREED AND DECLARED that if at any time or times the trustees shall in pursuance of the trust or in exercise of the power reposed in or conferred upon them by the forty-second section of the Conveyancing and Law of Property Act 1881 have invested any income (*e*) and accumulated the income of the investments so made, or shall have received and invested or only received any income, then and in every such case the trustees of this

Proviso as to arrears of pin money (*b*).

Trust of investments and accumulations of rents during minorities (*d*).

(*a*) See Treatise, 1173, 1175. This precedent, it will be observed, leaves the reversion expectant on the failure or determination of the provisions for the intended marriage in the husband. Moreover, if there should be female issue only of the intended marriage, that issue will take the property in exclusion of any son of the settlor by an after-taken wife, but subject to the powers of jointuring and charging portions given to him below. Whether that is what the settlor wishes must be ascertained in every case. As to ultimate limitations in settlements of realty, see Treatise, 1186.

(*b*) As to arrears of pin money, see Treatise, 787—792.

(*c*) If any enlargement of the powers conferred by the S. L. A. 1882 upon the tenant for life, or any additional administrative powers be desired, they may be appropriately inserted here. See forms below, p. 80.

(*d*) See 44 & 45 Vict. c. 41, s. 42; 45 & 46 Vict. c. 38, ss. 21, 22 (5) (6); Treatise, pp. 519, 1022, 1049, and pp. 687, 692, 693.

(*e*) "Income" is the word used in the statute referred to; Treatise, 1022.

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settlement shall stand possessed of the fund so arising from income and from investments of income, or from income only as the case may be, as aforesaid, UPON THE TRUSTS following (that is to say): If the infant during whose minority the said rents and profits shall have been accumulated as aforesaid shall attain the age of twenty-one years, Then upon trust to pay, transfer or assign the same to that infant, his or her executors or administrators as his or her personal estate; But if such infant shall die under the age of twenty-one years, Then upon trust to apply the same wholly in one or partly in one and partly in another or others of the modes in which the same would be applicable if the same were capital money arising under the Settled Land Act 1882 by means of a sale made in exercise of the power conferred by that Act of part of the premises expressed to be hereby granted (*a*), To the intent and so as that the last-mentioned fund and any investments whereof the same or any part thereof may consist, or whereinto it or any part of it may be transmuted, may for all purposes of disposition, transmission and devolution be considered as such capital money as aforesaid or as investments thereof, and the income arising therefrom respectively shall be paid or applied accordingly; AND in order to facilitate the declaration hereinafter contained of the trusts of the said term of 500 years and otherwise of the intent of the parties hereto, IT IS HEREBY DECLARED that every child of the said [*intended husband*] by the said [*intended wife*] who being a son shall live to attain the age of twenty-one years, or being a daughter shall either live to attain that age or marry, and whether a son or daughter shall not be one of the persons described in the clause next hereinafter contained, and thereby excluded from the class of portionists, shall be a person herein referred to as a portionist; AND THAT every son or daughter or all the daughters of the said [*intended husband*] by the said [*intended wife*] who shall attain the age of twenty-one years, and shall then or so soon as the said [*intended husband*] shall die, whichever shall last happen, be or become entitled in possession by purchase under these presents to an estate in tail male or in tail or to estates in common in tail in such if any hereditaments as

Definition of "portionist" and of "possible portionist" (*b*)

(*a*) Treatise, 664, 667.

(*b*) This form, providing for issue of the intended marriage only, may be easily adapted to the purpose of providing for issue of a subsequent marriage also. See a form of trusts of a portions term more in accordance with those in general use, below, p. 42. Trusts of money to be raised for portions are discussed in the Treatise, 1098—114

shall be then standing limited to such of the uses hereby limited as shall be then subsisting, or to a corresponding interest or to corresponding interests either in such (if any) capital money as shall have arisen under the Settled Land Act 1882 (*a*), and shall have been received for the trusts and purposes of the settlement hereby made, or shall otherwise have become subject to a trust for investment in the purchase of land to be settled to the subsisting uses of that settlement, or in investments of any such capital money as aforesaid, AND every child of the said [*intended husband*] by the said [*intended wife*] who if he or she had not previously either died or wholly or partially enlarged the estate in tail male or in tail or corresponding interest next hereinafter referred to would have been at the death of the said [*intended husband*] either solely or in common with another person or other persons entitled by purchase under these presents to an estate in tail male in possession or in tail in possession in such hereditaments as last aforesaid, or to a corresponding interest in such capital money or investments thereof as last aforesaid, BUT shall have in the lifetime of the said [*intended husband*] *either* wholly or partially enlarged the same estate in tail male or in tail or corresponding interest into an estate in fee simple or base fee or an absolute interest, *or* died without leaving any issue or a widow or husband him or her surviving (*b*), *or* died leaving his or her surviving issue capable of inheriting or becoming entitled to the last mentioned estate in tail male or in tail or corresponding interest, shall not be a portionist, but shall be excluded from the class of portionists, AND THAT until he or she shall by virtue of the clause last hereinbefore contained be excluded from the class of portionists every child of the said [*intended husband*] by the said [*intended wife*] shall be a person herein referred to as a possible portionist; AND IT IS HEREBY AGREED AND DECLARED that the premises are hereby limited to the said *A* and *B* for the said term of 500 years, UPON TRUST that if there shall be any child or children of the said [*intended husband*] by the said [*intended wife*] who shall become a portionist or portionists, then the trustees shall raise in the manner and at the times hereinafter specified and as to every sum to be raised under this trust with interest

Trust of term of 500 years if there be portionists to raise money with interest.

(*a*) Treatise, 664, 667.

(*b*) This leaves included in the class of portionists a child who while tenant in tail in remainder dies childless, but, as in *Ellison* v. *Thomas* (Treatise, 1107), leaving a widow.

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thereon at the rate of 4 per centum per annum from the death of the said [*intended husband*] or the day when the portionist for payment of whose portion or of part of it that sum shall be raised shall attain the age of twenty-one years, or if a girl marry, whichever of these two or in the case of a girl three events shall last happen, the sum or sums of money hereinafter specified (that is to say), If there shall be one portionist and no more the sum of £ sterling, If there shall be two portionists and no more the sum of £ sterling, If there shall be three portionists and no more the sum of £ sterling, and if there shall be four or more portionists the sum of £ sterling; AND THAT the trustees of this settlement shall raise the principal money so directed to be raised as aforesaid, or so much thereof as shall not in exercise of the power in that behalf hereinafter contained have been previously raised, so soon as the portions and parts of portions for payment whereof respectively the same principal money shall be required, shall vest in the persons who shall become entitled thereto respectively; AND IT IS HEREBY ALSO AGREED AND DECLARED that the trustees of this settlement shall (*c*) raise such money as they or he shall need, or shall be hereby authorised to raise for a portion or portions, or for part or parts of a portion or portions by mortgage, for all or any part of the said term of 500 years, of all or any hereditaments which shall at the time or respective times at which the same money shall be raised, be subject to such of the uses hereby limited as shall be then subsisting, or by or out of any such capital money as aforesaid, or by or out of money produced by sale of any investments of any such capital money as aforesaid, or by sale of timber or minerals, or by and out of the rents, profits, and yearly produce of the same hereditaments, capital money, and investments, or of any of them, or by all or any of the means aforesaid, or by any other reasonable means; AND that no mortgagee of whom the trustees of this settlement shall borrow any money, purporting to borrow the same in exercise of the power to raise money by mortgage, for all or any part of the said term herein contained, shall be bound to inquire whether the money so borrowed is needed or authorised to be borrowed, or to see to the application or be responsible for the non-application or

Times when portions may be raised (*a*).

Means whereby money may be raised (*b*).

(*a*) Treatise, 1122. (*b*) *Ib.* 1127.

(*c*) Here, if needed, insert the words "but subject to and without affecting the life estate of" the person, if there be one, whose life estate may be subsisting when the time for raising the portions arrives.

misapplication thereof; AND IT IS HEREBY ALSO AGREED AND DECLARED that the trustees of this settlement shall stand possessed of and be interested in the money and interest so to be raised as aforesaid in trust for such one or more exclusively of the others or other of the portionists, and of the issue of any deceased portionist or portionists, and, if there shall be more than one object of this power in whose favour it shall be exercised, in such shares with such future executory or other trusts for the benefit of the portionists and issue or of some or one of them, with such provisions for the advancement, either in the lifetime of the said [*intended husband*] or after his death, and the maintenance or education of the portionists and issue or of any of them, and upon such conditions, with such restrictions and in such manner as the said [*intended husband*] shall by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil, without transgressing the rule against perpetuities, appoint; AND in default of such appointment, and so far as no such appointment shall extend, in trust for the portionists in equal shares; PROVIDED ALWAYS that no portionist to whom or to whose issue any part of the said sum of £ , £ , £ , or £ as the case may be, may have been appointed in exercise of the aforesaid power for that purpose, shall in default of appointment to the contrary have or be entitled to any share of the unappointed part of the same sum without bringing the share or shares so appointed to him or her or to his or her issue as aforesaid into hotchpot, and accounting for the same accordingly; AND IT IS HEREBY ALSO AGREED AND DECLARED that the trustees of this settlement shall after the death of the said [*intended husband*], by and out of the rents and profits of the premises comprised in the said term or any part thereof, raise for the maintenance or education of every or any possible portionist, except any one who for the time being may be entitled in possession to any hereditaments then subject to the then subsisting uses of these presents or to the yearly produce of such, if any, capital money or investments thereof as aforesaid, such a yearly sum or such yearly sums of money (not exceeding what interest after the rate of 4 per centum per annum on the then possible portion of that possible portionist, or if any part of that possible portion shall then

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Trust for several portionists as husband shall appoint (*a*)

—in default for portionists equally.

Hotchpot (*b*).

Maintenance money (*c*).

(*a*) Of powers of appointment of personalty among issue, *ib.* 1196.

(*b*) Of the hotchpot clause, *ib.* 1220.

(*c*) *Ib.* 1135.

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already have been raised on the then unraised part thereof, would amount to, but clear of all charges except succession duty and income tax), as the trustees of this settlement shall think fit, and shall apply the same for such maintenance or education as aforesaid, in such manner in all respects as to them shall seem meet, and they may either themselves so apply the same or may pay the same to the guardian or guardians of such possible portionist as last aforesaid, or to any other person or persons for the purpose aforesaid;

Advancement (*a*).

PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees of this settlement after the death of the said [*intended husband*], or in his lifetime at his request in writing, by the ways and means aforesaid or any of them, to raise any sum or sums of money not exceeding altogether one-half of the then expectant or presumptive portion under the trusts aforesaid of any possible portionist, and to pay or apply the money so to be raised for the advancement or benefit of that possible portionist as the said [*intended husband*] during his life and after his death as the trustees

Power to raise money before it is wanted (*b*)

of this settlement shall think fit; PROVIDED ALWAYS that the trustees of this settlement may at any time or times before the portions or parts of portions for payment whereof respectively money may presumably be thereafter needed shall be required, but during the life of the said [*intended husband*] only with his consent in writing, raise the whole or any part or parts of the principal money which under the trusts herein contained may ultimately have to be raised, although it may not then be certain whether all or any of the money so raised may eventually be required;

—to accelerate term (*c*).

PROVIDED ALSO that in order to facilitate the raising in the lifetime of the said [*intended husband*] of any sum or sums of money pursuant to the trusts and provisions aforesaid, it shall be lawful for the said [*intended husband*] by any deed or deeds to accelerate the said term of 500 years, and give effect thereto with reference to the hereditaments to be sold, mortgaged, or otherwise disposed of for raising such sum or sums as last aforesaid, in the same order as if the

Exoneration of premises by raising of sums in anticipation.

limitation thereof had immediately preceded the use limited to the said [*intended husband*] for his life; PROVIDED ALSO that, subject to the proviso next hereinafter contained, every sum

(*a*) Treatise, 1136.
(*b*) *Ib.* 1122.
(*c*) This clause is adapted from one in 2 Hayes, Conv., 5th ed. 64.

so raised in anticipation of the contingency of its being needed as aforesaid shall exonerate the premises from an equal part of the money hereby directed to be raised for portions and from all subsequent interest in respect thereof; and also from the subsequent operation of the trust hereinbefore contained for raising money for maintenance or education to the extent of a yearly sum equal to interest at the rate of 4 per centum per annum on the amount which shall have been so raised as aforesaid; PROVIDED ALSO, AND IT IS HEREBY ALSO DECLARED, that if and in any and every case in which a possible portionist for whose advancement or benefit any part of his or her possible portion shall have been raised and applied under the power in that behalf hereinbefore contained shall fail to become a portionist, then if by his or her failure to become a portionist the amount to be raised for portions under the trusts of the said term shall be diminished, the sum of money which shall have been so raised for the advancement or benefit of that possible portionist shall not be accounted part of but as an addition to the sum to be raised for portions; But if by the failure of the possible portionist for whose advancement or benefit a part of his or her possible portion shall have been so raised as aforesaid, the amount which under the trusts of the said term is to be raised for portions will not be diminished, the sum of money which shall have been so raised for the advancement or benefit of the possible portionist shall be accounted as part of and not as an addition to the sum to be raised for portions; AND THAT if several possible portionists for whose advancement or benefit parts of their possible portions shall have been raised shall fail to become portionists, and though by the failure of one or more of them to become portionists the amount to be raised for portions would not be diminished, yet by the failure also of another or others of them to become portionists the amount to be raised for portions will be diminished, then the parts of possible portions which shall have been raised for the advancement or benefit of the possible portionists who shall have failed to become portionists shall not be accounted as parts of but as additions to the money to be raised for portions; AND IT IS HEREBY ALSO AGREED AND DECLARED that if in exercise of the power in that behalf hereinbefore contained the trustees of this settlement shall raise any money for the portion or portions of any possible portionist or possible portionists the

Provisions as to advances to possible portionists.

Trusts of unapplied balance.

PRECEDENT I.

trustees of this settlement shall invest the last-mentioned money, or so much thereof as shall not have been or shall not be so applied for advancement or benefit as herein mentioned, in or upon any stocks, funds or securities, except real securities in Scotland or Ireland and securities transferable by delivery merely, in or upon which by the then subsisting law trustees may be authorised to invest trust money, and may in their or his discretion from time to time vary or transpose such stocks, funds and securities into or for others of the kinds last aforesaid; AND SHALL, if and so long as the said [*intended husband*] shall be living, pay the interest, dividends, and yearly produce of the last-mentioned money, stocks, funds and securities, or of so much thereof as shall not have been applied for the advancement or benefit of any possible portionist to the said [*intended husband*], AND from and after the death of the said [*intended husband*] shall stand and be possessed of and interested in the same money, stocks, funds and securities, and the interest, dividends, and yearly produce thereof, upon the trusts which by virtue of these presents alone or by virtue of these presents and of any appointment to be made by the said [*intended husband*] in exercise of the power hereinbefore contained shall be applicable to the money hereby directed to be raised for portions which shall be represented by the same money, stocks, funds, or securities; PROVIDED ALWAYS that it shall be lawful for the trustees of this settlement to raise out of the last-mentioned money, stocks, funds and securities any part or parts not exceeding in the whole half of the then expectant or presumptive share of any possible portionist under the trusts aforesaid of the said trust money, stocks, funds and securities, and apply the same for his or her advancement or benefit as the trustees of this settlement shall think fit; AND IT IS HEREBY ALSO DECLARED that if in exercise of the power in that behalf hereinbefore contained any money shall be raised to answer any portion or portions for a possible portionist or for possible portionists, and such possible portionist or possible portionists as aforesaid or any of them shall fail to become a portionist or portionists, then and in every such case the money which shall have been raised to answer the portion of such possible portionist as last aforesaid, and shall not have been applied for his or her advancement or benefit as aforesaid, and the investments thereof, shall be held upon the trusts which at the time

Advancement out of balance.

Trust of money raised but not needed.

of the occurrence of the event whereby his or her failure to become a portionist shall be ascertained, shall be applicable to the money produced by sale of the premises and the investments thereof, or would be applicable to such money, if there were any, and the investments thereof, AND THAT if and whensoever the trustees of this settlement shall be bound or entitled to raise all or any part or parts of a portion or portions, they or he may, if they or he shall think fit, instead of actually raising the same, assign or demise the premises or any part or parts thereof to the person or persons to whom the same portion or portions or part or parts of a portion or portions shall be directed to be paid, or as he, she or they shall direct by way of mortgage for securing the same sum or sums so required or proposed to be raised, with interest for the same at such rate not exceeding 4 per centum per annum as shall in such assignment or demise be in that behalf specified; AND IT IS ALSO HEREBY AGREED AND DECLARED that, subject to the trusts hereinbefore contained and to the rights of the trustees of this settlement respectively and of the executors or administrators of them respectively, by any of the ways or means whereby the trustees of this settlement are hereinbefore authorised to raise money for portions to raise and reimburse themselves or himself all costs and expenses incurred in relation to the trusts aforesaid, the trustees of this settlement shall permit the person or persons who may for the time being be entitled to the remainder or reversion of the hereditaments comprised in the said term of 500 years expectant on the determination thereof to receive for his and their own use and benefit so much of the same rents and profits as shall from time to time remain after answering the trusts aforesaid; PROVIDED ALWAYS, and it is hereby further agreed and declared, that if the said [*intended wife*] shall die in the lifetime of the said [*intended husband*], Then if and so often thereafter as the said [*intended husband*] shall marry any other woman it shall be lawful for the said [*intended husband*], either before or after any and every such marriage as last aforesaid, either by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil (subject and without prejudice to the said term of 500 years and the trusts thereof, and in order of limitation immediately expectant on that term),

Power to create securities for portions instead of raising them.

Ultimate trust of term for reversioner(*a*).

Power for husband to jointure after-taken wife (*b*).

(*a*) Treatise, 1152; *Michell* v. *Michell*, 4 Beav. 549, 552; *Evans* v. *Scot* 1 H. L. C. 43, 70; *Armstrong* v. *Armstrong*, L. R. 18 Eq. 541.

(*b*) Treatise, 992.

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to appoint unto or to the use of any and every woman whom he shall so marry as last aforesaid if she shall survive him, after his death and during the whole or part of her life for her jointure, and either in bar or without being in bar of dower and freebench, a yearly rentcharge not exceeding one of £800 sterling without any deduction whatsoever (*a*) to be issuing out of and charged and chargeable upon all or any part or parts of the premises hereinbefore expressed to be hereby granted and conveyed, and payable by such periodical payments as the said [*intended husband*] shall in any such manner as aforesaid appoint; AND THAT it shall also be lawful for the said [*intended husband*], either before or after any and every such marriage as last aforesaid, by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil (but subject to the said term of 500 years, and the trusts thereof, and also subject to any rentcharge which in exercise of the power last hereinbefore contained may have been charged in favour of any wife of the said [*intended husband*] who may survive him, and to the powers for recovery thereof given by Act of Parliament (*c*), and to all, if any, exercises of the same powers respectively), to charge all or any part of the premises hereinbefore expressed to be hereby granted with the payment of any sum or sums of money not exceeding, in the different events hereinafter specified, the different sums hereinafter mentioned as and for the portion or portions of the child or children, or any one or more exclusively of the other or others of the children of the said [*intended husband*] by any wife whom he may marry after the death of the said [*intended wife*] (that is to say), If there shall be but one such child as last aforesaid the sum of £ , If there shall be but two such children as last aforesaid the sum of £ , If there shall be but three such children as last aforesaid the sum of £ , And If there shall be four or more such children as last aforesaid the sum of £ , And in manner aforesaid to appoint that the money so to be charged as last aforesaid or any part or parts thereof shall vest in and be payable to or among such child or children as last aforesaid and the issue of the same children or of any of them, or in and to or among any one or more

Power for husband to charge portions for younger children of subsequent marriage (*b*).

(*a*) If the donee of the power be not also the settlor, add ordinarily, "except succession duty." See Treatise, 928.

(*b*) Treatise, 1142. (*c*) *Ib.* 937.

exclusively of the others or other of the last-mentioned children and issue, at such age or time or ages or times, in such manner, and if more than one in such shares, and to be subject to such powers of appointment by the said [*intended husband*] or any other person or persons, and to such provision for the advancement (either in the lifetime of the said [*intended husband*] or after his death), and for the maintenance or education of any such child, children or issue as last aforesaid, at the discretion of any trustees or trustee or otherwise, and to such other powers and provisions for the benefit of such child, children, or issue as last aforesaid, or of some or one of them, as the said [*intended husband*] shall think fit; And by the same or any other deed or deeds, with or without power of revocation and new appointment, or by will or codicil (but subject and without prejudice as aforesaid), to charge the premises which shall be charged with such portion or portions respectively as last aforesaid with the payment during all or any part or parts of any period or periods during which any such portion or portions as last aforesaid shall be contingently payable, to any person or persons then in being, and clear of all deductions except for succession duty, of any annual sum or sums of money not exceeding what the interest of the sum or sums of money so to be charged for such a portion or portions as last aforesaid would amount to after the rate of 4 per centum per annum, to be raised, paid and applied in such manner as the said [*intended husband*] shall in manner aforesaid appoint for the maintenance and education of the child or children or issue for whom the portion or portions to be charged as last aforesaid shall be intended, in the meantime until such portion or portions as last aforesaid shall become payable; And by the same or any other deed or deeds, with or without power of revocation and new appointment, or by will or codicil (but subject and without prejudice as aforesaid), to appoint the premises which shall be so charged as last aforesaid to any person or persons, for any term of years, with or without impeachment of waste, upon such trusts by mortgage or otherwise to raise the principal money and annual sum or sums which shall have been so charged as last aforesaid, and the costs and expenses (if any) to be incurred in or about the execution of the trusts thereof, as the said [*intended husband*] shall in manner aforesaid declare; PROVIDED ALWAYS, and it is hereby agreed and declared, that

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Provision against excessive charge.

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if the said [*intended husband*] shall exercise the powers of charging for portions and for maintenance or either of them repeatedly, then the said repeated exercises of the same powers respectively shall not nor shall any of them operate to charge the premises with any larger annual or gross sum or amount of money than the premises could have been charged with by a single exercise of each of the same powers, but every later exercise of each of the same powers which would, if it were allowed to operate, create a charge in excess of that which could have been created by a single exercise of the same power shall, so far only as the same later exercise or exercises of the same power would, if allowed to operate, create such an excessive charge, fail, but so far as the same later exercise or exercises of the same power might operate without creating any such excessive charge as aforesaid, the same shall operate;

Covenant to surrender copyholds (*a*).

AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration hereinbefore mentioned, the said [*intended husband*] doth hereby, with the approbation of the said [*intended wife*] and as beneficial owner, covenant with the said *A* and *B* that if the said intended marriage shall be solemnised, the said [*intended husband*] or his heirs, and all other necessary and proper parties (*b*), will or shall at the costs and charges of the said [*intended husband*], his heirs, executors or administrators, immediately after the solemnisation of the said intended marriage, surrender into the hands of the lord or lady, lords or ladies of the manors respectively of which the copyhold or customary hereditaments hereinafter described are respectively holden according to the customs of the same manors respectively,

To use of trustees.

ALL, etc., with the appurtenances to the same premises belonging or appertaining, TO THE USE of the said *A* and *B*, their heirs and assigns for ever, according to the customs of the said manors respectively, and subject to the payment and performance of the rents, fines, heriots, suits, and services therefor respectively due and of right accustomed,

Upon trusts corresponding with uses of freeholds.

but nevertheless UPON SUCH TRUSTS and with and subject to such powers, provisoes, agreements and declarations as will most nearly correspond with the uses, trusts, limitations, powers, provisoes, agreements and declarations hereinbefore

(*a*) As to settlements of copyholds, see Treatise, 289, 1306.

(*b*) If according to the custom of the particular manor a widow is entitled to freebench in all the tenements of which her husband has been possessed during their marriage, the intended wife will be a necessary party to the surrender.

limited, declared and contained of and concerning the freehold hereditaments and premises expressed or intended to be hereby granted and conveyed, so far as the different natures and tenures of the same estates respectively and the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging; AND the said [*intended husband*] doth hereby declare that if the said intended marriage shall be solemnised, then and thenceforth, until the copyhold or customary hereditaments hereinbefore covenanted to be surrendered shall be surrendered accordingly, the said [*intended husband*], his heirs and assigns, will and shall stand possessed of the premises hereinbefore covenanted to be surrendered, UPON THE TRUSTS, and with and subject to the powers, provisoes, agreements and declarations upon, with and subject to which, if the same premises were surrendered pursuant to the covenant in that behalf hereinbefore contained, the trustees or trustee of the settlement for the time being would hold the same premises; AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration hereinbefore mentioned, the said [*intended husband*] doth hereby assign unto the said *A* and *B*, their executors, administrators and assigns, ALL AND SINGULAR the said messuages and hereditaments described in and expressed to be demised by the hereinbefore recited indenture of lease, TO HAVE AND TO HOLD the said messuages and premises intended to be hereby assigned unto the said *A* and *B*, their executors, administrators and assigns, for all the residue of the said term of 300 years, subject to the payment of the rent and the performance and observance of the lessee's covenants, by and in the hereinbefore recited indenture of lease reserved and contained respectively, UPON TRUST that the trustees of this settlement shall receive the rents and profits of the last-mentioned premises, and shall therewith or thereout pay the rents and yearly sums reserved by the said lease thereof, and perform and observe the covenants by the lessee in the said lease contained; AND subject thereto shall hold the premises hereinbefore expressed to be hereby assigned, UPON SUCH TRUSTS, and with and subject to such powers, provisoes, agreements and declarations as shall correspond with the uses, trusts, powers, provisoes, agreements, and declarations hereinbefore limited and declared of and concerning the freehold here-

Trust of copyholds till surrender.

Assignment of leaseholds (*a*).

To hold.

Trusts corresponding with uses of freeholds.

(*a*) As to settlements of leaseholds, see Treatise, 289, 1327.

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ditaments and premises hereinbefore expressed to be hereby granted as nearly as the different tenures and qualities of the said premises respectively and the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging, and so that if the said leasehold premises or any undivided part thereof shall vest in any person hereby made tenant in tail male or in tail by purchase of the premises hereinbefore expressed to be hereby granted, and if such person as last aforesaid shall die either under the age of twenty-one years, or before every particular estate in the premises hereby granted, which is hereinbefore limited to take effect in priority to the estate in tail male or in tail of such tenant in tail male or in tail as last aforesaid, shall, if a life estate, have either failed or determined, or, if an estate in tail male or in tail, shall have either failed or shall have determined by the death of the tenant by purchase thereof under the age of twenty-one years, without leaving issue capable of inheriting the same estate, and also before the person in whom the said leasehold premises or undivided part thereof shall have so vested as aforesaid, shall during the existence of some such preceding estate as aforesaid have enlarged his said estate in tail male or in tail into an estate in fee simple, then and so often as the same shall happen, the said interest in the premises hereinbefore expressed to be hereby assigned of the person so hereby made tenant in tail male or in tail by purchase of the premises expressed to be hereby granted as aforesaid or of an undivided part thereof who shall so die as aforesaid shall cease and determine, and the said premises hereby assigned or the undivided part thereof which had vested in that person shall thereupon go, devolve and remain in the same manner as if they had been freeholds of inheritance included in the grant and limitations hereinbefore contained; AND IT IS HEREBY ALSO AGREED AND DECLARED that if and so often as, while any hereditaments held for years (*a*) shall be subject to such of the trusts hereby declared of the leasehold premises hereinbefore expressed to be assigned as shall then remain capable of taking effect, the reversion in fee simple in any of the hereditaments so held for years (*a*) shall be conveyed to the uses, on the trusts and subject to the powers and

On acquisition of reversion terms may be merged.

(*a*) If the settlement comprises leaseholds for lives, or for years determinable with lives, insert here the words "or life or years determinable with life." See a settlement of such property, below, p. 71.

provisions which under this settlement or the exercise of any power of charging herein contained shall be subsisting in or with respect to the freehold hereditaments for the time being subject or which if purchased would be subject to the uses hereby limited, and then still capable of taking effect, the trustees or trustee in whom the said hereditaments so held for years (*a*) may be vested shall, if the reversion in fee which shall have become subject to the last-mentioned uses shall be immediately expectant on the said leasehold estate or interest, so surrender the said leasehold interest or estate as that the same may merge in the said reversion in fee; AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration hereinbefore mentioned, the said [*intended husband*] doth hereby assign unto the said *A* and *B* ALL AND SINGULAR the plate, furniture, pictures, books, prints, linen, china, glass, and other articles of domestic use and ornament now in or about the mansion called , TO HAVE AND TO HOLD the said plate, furniture, pictures, books and other articles hereinbefore expressed to be hereby assigned unto the said *A* and *B*, UPON THE SAME TRUSTS as are hereinbefore declared of the said leasehold premises hereby assigned, other than the trusts hereinbefore declared for receipt of the rents and profits of the said leasehold premises, and the payment of the rent and performance of the covenants to be paid and performed in respect thereof, AND so as that the said [*intended husband*] shall during his life be (*c*) entitled to the actual custody of the premises last hereinbefore expressed to be hereby assigned; AND IT IS HEREBY DECLARED that as soon as may be after the execution of these presents an inventory shall be taken of the plate, furniture, pictures, books, articles and premises last hereinbefore assigned, and that such inventory shall from time to time be revised as occasion shall require, and shall be signed by the said [*in-*

Assignment of chattels (*b*).

To hold

Upon trusts before declared of leaseholds.

Direction to take inventory.

(*a*) See note to preceding page.

(*b*) As to settlements of chattels, see Treatise, 297—299, 1327.

(*c*) In a case where there may be several tenants for life, for the words "the said [*intended husband*] shall during his life" substitute the words "every person who shall from time to time be entitled under the trusts of these presents to an interest in possession in the premises last hereinbefore assigned shall, if of the age of twenty-one years and upwards, and while entitled to such an interest in possession as last aforesaid, be also."

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tended husband] whensoever (*a*) the trustees of this settlement shall require him so to do, and also at every such time as aforesaid by the trustees of this settlement; AND that the said plate, furniture, pictures, books, articles and premises shall at all times be kept adequately insured against loss or damage by fire (so far as the same are capable of being so insured) and properly preserved, by and at the expense of the said [*intended husband*] (*b*); but the said plate, or any part thereof, may from time to time be exchanged, or the form thereof may be altered at the expense of the said [*intended husband*] (*b*), but so only as that the intrinsic value thereof shall not be diminished; PROVIDED ALWAYS that after the said [*intended husband*] (*b*) shall have signed the inventory aforesaid, the trustees of this settlement shall not be bound to see to the insurance or preservation of the said plate, furniture, pictures, books and articles, or any of them, and shall not be responsible for any omission or neglect on the part of the said [*intended husband*] (*b*), with respect to the insurance or preservation thereof, nor for any loss or damage occasioned by any other act or omission on the part of the said [*intended husband*] (*b*), but the trustees of this settlement shall not be precluded from interfering for the protection of the property when and as they or he shall think fit; PROVIDED ALWAYS, and it is hereby agreed and declared, that the trustees of this settlement shall, upon lending trust-money on any mortgage securities, be at liberty to accept titles which are not strictly marketable, and in particular to dispense either wholly or partially with lessors' and underlessors' titles to leasehold hereditaments, and with the consent of the said [*intended husband and wife*] during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor

And insure.

Exoneration of trustees from responsibility (*c*).

Trustees empowered to accept less than marketable titles to, and to release securities (*d*)

(*a*) In such a case as that described in the preceding note, for the words "the said [*intended husband*] whensoever," substitute the words "every person for the time being entitled to the actual custody and possession of the premises last hereinbefore assigned under the trusts hereinbefore contained if and whensoever, after he shall have attained the age of twenty-one years."

(*b*) In such a case as that referred to in the preceding notes, for "said [*intended husband*]" substitute in the first, second, fourth, and fifth places the words "person for the time being entitled to the actual possession thereof"; in the third place the words "person for the time being entitled to the actual possession of the last-mentioned premises."

(*c*) Treatise, 1429. (*d*) *Ib.* 1428.

at the discretion of the trustees of this settlement, to accept other real security for any part of the trust property which may be invested on real security in lieu of all or any of the hereditaments comprised in any such security, and also to release from any such security any of the hereditaments therein comprised without which the trustees of this settlement shall deem the existing security or securities sufficient (*a*). PRECEDENT I.

AND IT IS HEREBY DECLARED that the trustees of this settlement may in their or his uncontrolled discretion, instead of acting personally, employ and pay a solicitor or any other person to transact any business or do any act of whatever nature required to be done in the premises, including the receipt and payment of money; —to employ agents (*b*)

AND that any trustee of this settlement, being a solicitor or other person engaged in any profession or business, may be so employed or act, and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trust, including acts which a trustee could have done personally (*d*). —to allow professional trustees' charges (*c*).

AND IT IS HEREBY AGREED AND DECLARED that the said *A* and *B* are trustees of the settlement hereby made for Trustees and those to be appointed in

(*a*) The rules of prudence with reference to the proportion of loans to the value of the securities upon which it may be proposed to make them which have been adopted by the Court (Treatise, p. 462), have been largely neglected. While land tended, as for many years it did generally, to rise in value, those rules probably seemed to many men, accounted prudent, needlessly stringent; but the recent depreciation in land has shown that they did not err in that direction, and trustees who have lent money in disregard of them have in some cases been made to bear themselves the consequent loss to their trust fund. Instead of inferring from these events the propriety of more rigidly adhering to the rules referred to, some persons have desired rather that trustees should be absolved from the obligation of those rules. In accordance with instructions prompted by such a wish, the following addition to the ordinary trustee clauses was framed :—

Notwithstanding any rule that trustees should not lend more than two-thirds of the value of land or half of the value of house or other property, it shall be lawful for the trustees of this settlement to lend on the security of real or leasehold hereditaments so much money as they or he shall in their or his absolute discretion think fit, without, in the event of the security afterwards proving inadequate, being liable for any loss consequent thereon.

The insertion of such a clause cannot, however, be recommended, and the trustees at whose request it was prepared were warned that they must not be misled by the breadth of its terms into the supposition that it relieved them from responsibility for the prudence of any loan they might make. They might safely neglect the supposed two-thirds and half rules, in so far as those rules might be at all arbitrary, and probably the clause authorised them to adopt the opinion of men of business who were reputed prudent as to what proportion might be safely lent; but they must still exercise prudence, and they ought not to forget that with respect to proportion of loan to security the above-mentioned rules had been adopted as general rules by the Court.

(*b*) Treatise 1430-2. (*c*) *Ib.* 1420.

(*d*) This is the clause stated by the Council of the Incorporated Law Society to

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substitution for them to be trustees under S. L. A. 1882 and Conv. A. 1881.

the purposes of the Settled Land Act 1882 (*a*), and for the purpose referred to in the forty-second section of the Conveyancing and Law of Property Act 1881 (*b*); AND ALSO that all persons who hereafter, in either immediate or mediate succession to the said *A* and *B* respectively, may be appointed trustees for such of the purposes for which the said *A* and *B* are hereby appointed as at the times of such appointments as last aforesaid respectively may remain unaccomplished and capable of being performed shall also be trustees of the settlement hereby made for the purposes of the Settled Land Act 1882, and for the purpose referred to in the forty-second section of the Conveyancing and

Extension of meaning of "the trustees of this settlement."

Law of Property Act 1881; AND ALSO that, with reference to every future act and event, the term "the trustees of this settlement" used in this settlement means not only the said *A* and *B* if and so long as they shall be trustees of these presents, and either of them if and so long as he may be the sole trustee of these presents, but also, at every other time during the existence of the settlement hereby made, the persons (whether either the said *A* or *B* shall or shall not be one of them) or person who shall, at the time when the same act or event shall be done or shall occur, be for the time being jointly trustees or solely trustee appointed hereby or in such succession as aforesaid, and also if and whensoever any person being at the time of his death sole trustee for the purposes then unaccomplished for which the said *A* and *B* are hereby made trustees shall have died, the legal personal representative or representatives of that person, unless and until other trustees

Nomination of persons to appoint new trustees (*c*).

for those purposes shall be appointed; AND IT IS HEREBY DECLARED that the power of appointing a new trustee or new trustees of this settlement created by the Conveyancing and Law of Property Act 1881 may be exercised by the said [*intended husband and wife*] during their joint lives, and after the death of one of them by the survivor of them during his or her life, and after the death of such survivor by the continuing trustees or trustee of this settlement for the time being, and if

have been settled by Mr. Wolstenholme to meet the difficulties adverted to above by the decisions stated in the Treatise, Ch. XVI., ss. 5 and 8. Though the fact of Mr. Wolstenholme's having settled the clause does not show that he approves of its insertion in ordinary settlements and without express instructions, yet his eminence as a conveyancer and his position as a Conveyancer to the Court, coupled with the circumstance of his having settled the form at the instance of the Council of the Incorporated Law Society, seem to me to make it proper to insert the clause here. The reasons for inserting such a clause are very strong, but not such, it is conceived, as to justify its insertion without the express approbation of the settlor himself.

(*a*) Treatise, 663. (*b*) *Ib.* 519, 520, 1022. (*c*) *Ib.* 1357—1382.

there shall not be any continuing trustee then by the refusing or retiring trustees or trustee if any, and if able and willing to exercise this power, or otherwise by the acting executors or executor, administrators or administrator of the trustee who alone continuing to be such until his death shall have then last previously died; PROVIDED ALWAYS, and it is hereby agreed and declared, that if and whensoever there shall be any persons or person hereby nominated for that purpose as aforesaid able but not willing to exercise the power last hereinbefore referred to, no other persons or person while that shall be the case shall be entitled to exercise that power *(a)*; PROVIDED ALWAYS, and it is hereby agreed and declared, that the covenants by the [*intended husband*] for the right to convey and for quiet enjoyment of the premises and for the freedom from incumbrances and further assurance thereof which are by the Conveyancing and Law of Property Act 1881 implied in these presents, shall bind the said [*intended husband*], his heirs, executors, administrators and assigns, with respect only to every or anything by the said [*intended husband*] done, executed or omitted or knowingly suffered and the consequences thereof, and not with respect to anything by any person through whom he derives title, whether by purchase for value or otherwise, done, executed or omitted or knowingly suffered *(c)*. AND IT IS HEREBY AGREED AND DECLARED that so long as there shall remain subject to any of the trusts hereby declared any property for the further assurance whereof there is implied in these presents a covenant by the said [*intended husband*], the costs, charges and expenses of and incident to the performance of the said covenant shall be borne by the said [*intended husband*], his heirs, executors or administrators *(d)*. IN WITNESS, etc.

Restriction of implied covenants for title *(b)*.

(a) As in the event of the person nominated to appoint new trustees being "unwilling" though "able" to exercise the power the Conveyancing Act 1881 authorises other persons to exercise it (Treatise, 1359), Mr. Blakesley has pointed out the expediency of inserting this proviso.

(b) Treatise, 320.

(c) Where the property settled is subject to incumbrances, if the intent be that it shall remain subject to those incumbrances, except them from those to which the implied covenant for freedom from incumbrances is to relate; if the intent be that the settlor shall discharge the incumbrances, insert a covenant by him to do so. See Treatise, 331. Where a settlor covenanted that the estate was free from incumbrances his executrix was not allowed to raise out of the estate a sum to which the covenantor was at the date of his covenant entited. *Gower* v. *Gower*, Cox 53.

(d) Where the property and trusts are of such a nature that the trust property cannot come into the hands of an assignee discharged from the trusts, it seems proper to provide that the further assurances shall be at the costs of the trust estate. 9 Jarm. By. 334.

II.

SURRENDER OUT OF COURT *by* HUSBAND, *pursuant to a Covenant in his Marriage Settlement, to the use of the Trustees of the Settlement* (*a*).

THE MANOR of in the county of .

Recital of settlement.

WHEREAS by an Indenture bearing date etc., and made between *A B* of etc. of the first part, *C*, now the wife of the said *A B* but at the date of the said Indenture being, and therein called *C D* of etc., spinster, of the second part, and [*trustees*] of the third part (being a settlement made in consideration of the marriage which was then intended and has since been solemnised between the said *A B* and the said *C* his wife), It was witnessed that in consideration of the said then intended marriage the said *A B* did grant and assign unto the said [*trustees*] and to their heirs All and singular the freehold —— —— hereditaments therein particularly described, with their appurtenances, to hold unto the [*trustees*] their heirs and assigns, to, for and upon the uses, trusts and purposes, and with and subject to the powers, provisoes, declarations and agreements in the said indenture of settlement limited and expressed of and concerning the same freehold hereditaments, And by the said indenture of settlement it was also witnessed that the said *A B* did thereby covenant that he (*b*) would after the solemnisation of the said then intended marriage duly surrender, according to the custom of the said manor, the customary or copyhold hereditaments therein and hereinafter described, with their appurtenances, to the use of the said [*trustees*], their heirs and assigns for ever, upon and for such trusts, intents and purposes as would best and nearest correspond with the uses, trusts and limitations therein expressed, declared and contained of and concerning the said

Surrender.

freehold hereditaments therein conveyed and assured; NOW BE

(*a*) Treatise, 289.

(*b*) Above, p. 16. If the wife's concurrence is needed, add here: "and all other necessary or proper parties."

PRECEDENT II.

IT REMEMBERED that on the day of the said *A B* (*a*) came before J. S., Esq., Steward of the said manor, and in performance of the said covenant contained in the said indenture of settlement (*b*) did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward by the rod according to the custom of the said manor, ALL, etc., with the appurtenances to the same premises belonging or in anywise appertaining, to which hereditaments and premises the said *A B* had been admitted at a court held for the said manor on the day of TO THE USE of the said [*trustees*] their heirs and assigns for ever according to the custom of the said manor, but nevertheless UPON THE TRUSTS and with and subject to the powers, provisoes, agreements and declarations upon, with, and subject to which the same customary or copyhold hereditaments and premises were by the hereinbefore in part recited indenture of settlement covenanted to be surrendered. *A B.*

Taken and accepted this *C D.*

day of (*c*) by me,

J. S., Steward of the said manor.

(*a*) If the wife must concur, add: "and the said *C* his wife."

(*b*) If the wife's concurrence is needed, add here: "the said *C* being first examined by the steward separately and apart from her said husband, and freely and voluntarily consenting thereto."

(*c*) If the wife be a party, add here: "the said *C D* being first examined by me separately and apart from her said husband, and freely and voluntarily consenting thereto." As to surrenders of copyholds by married women see Scriv. Copy., 3rd ed. 158—163; 6th ed. 84—86. Cf. M. W. P. A. 1882, ss. 1, 2, 5, 25.

III.

PRESENTMENT OF SURRENDER *by* HUSBAND *to the Trustees of his Marriage Settlement* AND ADMITTANCE *of the Trustees.*

Presentment of covenant to surrender (*a*).

AT this Court the homage FIND AND PRESENT that by an Indenture (*b*) bearing date etc., and expressed to be made between *A B* of the first part, *C*, now the wife of the said *A B* but at the date of the said Indenture being and therein called *C D* of etc., spinster, of the second part, and [*trustees*] of the third part (being a settlement made in consideration of the marriage which was then intended and has since been solemnised between the said *A B* and the said *C* his wife), IT WAS WITNESSED that in consideration of the said then intended marriage the said *A B* did grant and convey unto the said [*trustees*] and to their heirs all and singular the freehold —— —— and hereditaments therein particularly described with their appurtenances, to hold unto the said [*trustees*], their heirs and assigns, to, for and upon the uses, trusts, intents and purposes, and with and subject to the powers, provisoes, declarations and agreements in the said indenture of settlement limited, expressed, declared and contained of and concerning the same freehold hereditaments; And by the said indenture of settlement IT WAS ALSO WITNESSED that the said *A B* did thereby covenant that the said *A B* (*c*) would, either before or with all convenient speed after the solemnisation of the said then intended marriage, duly surrender according to the custom of the said manor the customary or copyhold hereditaments therein and hereinafter described with their appurtenances to the use of the said [*trustees*] their heirs and assigns for ever, upon and for such trusts, intents and purposes as would best and nearest correspond with the uses, trusts and limitations thereinbefore expressed, declared and contained of and concerning the said freehold hereditaments thereinbefore conveyed and assured; AND THEY FURTHER FIND AND PRESENT that on

And of surrender.

(*a*) Treatise, 289.

(*b*) Above, pp. 1, 2, 16.

(*c*) If appropriate, add here: "and *C* his wife."

the day of the said *A B* (*a*) came before the said steward and in pursuance of the said covenant in that behalf contained in the said indenture of settlement (*b*) did out of court surrender into the hands of the lord of this manor by the hands and acceptance of the said steward by the rod according to the custom of this manor, ALL, etc., with the appurtenances to the same premises belonging or in anywise appertaining, to which hereditaments and premises the said *A B* was admitted at a court held for this manor on the day of , TO THE USE of the said [*trustees*] their heirs and assigns for ever according to the custom of this manor, but nevertheless upon and for the trusts, intents and purposes expressed and declared or referred to of and concerning the same customary or copyhold hereditaments and premises in and by the said indenture of settlement; NOW AT THIS COURT come the said [*trustees*] and pray to be admitted to the customary or copyhold hereditaments and premises so surrendered to their use by the said *A B* (*a*) as aforesaid. To which said [*trustees*] the lord of this manor by the said steward grants seisin thereof by the rod TO HAVE AND TO HOLD the said hereditaments and premises with their appurtenances unto the said [*trustees*] and their heirs, but nevertheless Upon and for the trusts, intents and purposes expressed and declared or referred to concerning the same customary or copyhold hereditaments and premises in and by the said surrender so made thereof by the said *A B* (*a*) as aforesaid to be holden of the lord by copy of court roll at the will of the lord according to the custom of this manor by fealty suit of Court and the ancient annual rent or rents and other duties and services therefor due and of right accustomed, and so (saving the right of the lord) the said [*trustees*] are admitted tenants thereof in manner and form aforesaid and pay to the lord for a fine on such their admittance the sum of £ and their fealties are respited.

PRECEDENT III.

Prayer for admittance.

Grant.

To hold.

Upon trusts of surrender.

(*a*) If appropriate, add here: "and *C* his wife."

(*b*) If the wife's concurrence is needed, add here: "the said *C* being first examined by the steward separately and apart from her said husband, and freely and voluntarily consenting thereto."

See above, p. 25, note (*c*).

IV.

FAMILY SETTLEMENT (*a*) *made on Marriage of an* ELDEST SON; *Appointment subject to Prior Uses of Previously Settled Estates, and Appointment and Grant of the* FATHER'S *Estate; Creation of Rent-charges for* PIN-MONEY *and* JOINTURE *of intended* WIFE, *for Income of intended* HUSBAND *and Maintenance of Children during life of Father after death in his lifetime of intended Husband; Portions Term of* 500 *Years; Joint Power of General Appointment by* FATHER *and intended* HUSBAND; FATHER *for Life; Intended* HUSBAND *for Life; His First and other* SONS *successively in Tail Male;* FATHER'S *two other existing* SONS *successively for Life with Remainders to their First and other Sons successively in Tail Male;* FATHER'S *subsequently to be born* SONS *successively in Tail Male; Term of* 1000 *Years;* BROTHERS *of* FATHER *successively for Life with Remainders to their First and other* SONS *successively in Tail Male; Intended* HUSBAND *in Fee; Proviso as to Arrears of Pin Money; Trusts of Portions Term; Trusts of* 1000 *Years Term, to raise on Failure of Issue Male* £150,000 *for* DAUGHTERS *of* FATHER *and of intended* HUSBAND; *Powers for* FATHER *to raise* £40,000; *for intended* HUSBAND *to raise* £20,000; *for intended* HUSBAND *to charge* JOINTURE *for after-taken* WIFE, *and Portions for Children of Subsequent Marriage; for Tenants for Life to Jointure and charge Portions; Powers to lease Encroachments, to buy or to pull down and rebuild Mansion; Preservation of Powers in Old Settlement; Appointment of and Covenant to surrender Copyholds and Appointment of Consols upon like Trusts; Nomination of Persons to appoint New Trustees in Classes; Qualification of Implied Covenants for Title.*

Parties (*b*)

THIS INDENTURE, made the day of , 1885, BETWEEN the Right Honourable William *Earl of X*, and William W.,

(*a*) Treatise, 2, 25, 1175.
(*b*) As to parties and recitals, see Treatise, 278—284.

Esquire, the eldest son and heir apparent of the said William *Earl of X*, and commonly called the Right Honourable W. W., *Viscount Y*, of the FIRST *part;* the said W. *Earl of X* of the SECOND *part;* the said W. W. *Viscount Y* of the THIRD *part;* Augusta *Z*, commonly called the Right Honourable *Lady A. Z*, the eldest daughter of the Most Honourable the Marquis of *A*, of the FOURTH *part*; *A* and *B* (who are hereinafter designated in some places by their names and in others, together with such other persons as are hereinafter in that behalf described, by the words "trustees of this settlement") of the FIFTH part; and *K* and *L* of the SIXTH part: WHEREAS a marriage is intended to be solemnised between the said W. W. Viscount *Y* and the said Lady A. *Z*; AND WHEREAS by an indenture bearing date the day of instant and expressed to be made between the said W. Earl of *X* of the first part, the said W. W. Viscount *Y* of the second part, and R. G. of the third part—which indenture has since been or is intended forthwith to be enrolled in the Enrolment Department of the Central Office of the Supreme Court of Judicature (*a*)—The Manor or Lordship of L in the county of , and divers other manors, farms and hereditaments situate in several counties, which are hereinafter first particularly described or referred to and expressed and intended to be hereby appointed, granted and conveyed, together with their respective rights, royalties, members and appurtenances, were conveyed, limited and assured, freed and discharged from the estate tail of the said W. W. Viscount *Y*, expectant on the death of the said W. Earl of *X*, which was in the indenture now in recital mentioned to have been created by a certain indenture of release and settlement of the day of , 1786, therein recited, and from all other estates tail as well of the said W. W. Viscount *Y* as of the said W. Earl of *X*, and also freed and discharged from (among other charges therein mentioned) several charges or sums amounting in the whole to the sum of £ , therein mentioned to have previously affected the said manors and hereditaments or different parts thereof, and to have been paid off and discharged by the said W. Earl of *X* out of his own money; BUT as to such parts of the said manors and hereditaments as are respectively comprised therein or affected thereby SUBJECT to two several terms of 600 years and 1000 years, created by the said inden-

PRECEDENT IV.

Recital of intent to marry,

—of disentailing deed of estates first described,

—of freeholds,

subject to prior uses.

(*a*) Treatise, 1618, 1619; Rules of Sup. Court 1883 [902], [1041].

PRECEDENT IV. ture of release and settlement of the day of , 1786, and to the payment of the sum of £12,000, being the portion remaining unpaid of two several sums of £10,000 and £10,000 (making together £20,000) by the same indenture of release and settlement originally authorised to be raised under the trust of the same terms for the portions of the younger sons and of the daughters of the Right Honourable George Earl of *X* (the father of the said W. Earl of *X*), as in the indenture now in recital particularly mentioned, which remaining sum of £12,000 is intended shortly to be paid off by the said W. Earl of *X* and W. W. Viscount *Y*, AND as to such of the said manors and hereditaments as are situate in the said county of , and as were comprised in an indenture of the day of , 1828, in the indenture now in recital recited (being a settlement executed on the marriage of the said W. Earl of *X* with the Right Honorable F. now Countess of *X*, his second and present wife, and made in exercise of powers created by the said indenture of release and settlement of the day of , 1786), SUBJECT to a term of 99 years determinable on the death of the said W. Earl of *X*, by the said indenture of the day of , 1828, limited for raising an annual sum of £500 during the joint lives of the said W. Earl of *X* and F. Countess of *X*, in the nature of pin money for the benefit of the said Countess of *X*, as therein mentioned, and for other the purposes in the last-mentioned indenture expressed and to the trusts of the same term, AND ALSO SUBJECT to a jointure rentcharge of £1200 by the last-mentioned indenture also limited to the said F. Countess of *X* for her life in case she should survive her husband the said W. Earl of *X*, and to the powers and remedies thereby limited for securing the same, and to the term of 200 years thereby limited or created for further securing the said jointure rentcharge and to the trusts thereof, AND ALSO SUBJECT to a term of 700 years by the said indenture of the day of , 1828, limited for raising the sum of £10,000 for the portions of the children of the said W. Earl of *X* by the said F. Countess of *X* his wife, and (as to the last-mentioned manors and hereditaments only) ALSO SUBJECT to the powers of leasing, selling, and exchanging, and appointing new trustees and other powers of the like nature which under or by virtue of the said indenture of release and settlement of the day of , 1786, and by a certain Act of Parliament made and passed in the year of the reign of

PRECEDENT IV.

His Majesty King George the Third (being an Act for enabling the said W. Earl of *X* to grant building leases of certain parts of his settled estates), were or would be exerciseable by or with the consent of the said W. Earl of *X*, as tenant for life in possession of the same manors and hereditaments, and were expressly preserved by the indenture now in recital, TO THE USES FOLLOWING, (that is to say) To such uses, upon such trusts and with and subject to such powers, provisoes, agreements and declarations, as the said W. Earl of *X* and W. W. Viscount *Y*, by any deed or deeds, with or without power of revocation and new appointment, should from time to time or at any time direct, limit or appoint, and in default of and until and subject to any such direction, limitation or appointment, to, for and upon such uses, trusts, intents and purposes, as in the indenture now in recital are mentioned or referred to, by virtue of which uses the said W. Earl of *X* is tenant for life in possession of the same manors and hereditaments, with remainder to the said W. W. Viscount *Y* in tail, and, subject to divers intermediate limitations, the said W. Earl of *X* is entitled to the ultimate reversion in fee in the same manors and hereditaments; AND IN THE INDENTURE NOW IN RECITAL there was contained a covenant by the said W. Earl of *X* and W. W. Viscount *Y* to make, execute and perform all such surrenders, assurances and things as should be necessary for barring the estate tail of him the said W. W. Viscount *Y*, expectant as aforesaid, created by the said indenture of release and settlement of the day of 1786, and all other estates tail as well of the said W. W. Viscount *Y* as of the said W. Earl of *X*, of and in the copyhold or customary messuages, lands and tenements, parcel of the manor of C , in the county of M , and all other the customary or copyhold tenements which are hereinafter particularly described or referred to, and covenanted to be settled with the appurtenances, and to settle the same copyhold or customary tenements upon such trusts and with and subject to such powers of joint appointment and other powers, provisoes, declarations and agreements as were in the indenture now in recital expressly or by reference limited and declared of and concerning the manors and hereditaments thereby granted and released or expressed and intended so to be, or such and so many of them as should be at the time of performance of that covenant subsisting undetermined and

To the uses therein contained;

and of copyholds,

PRECEDENT IV.

capable of taking effect so far as the nature of the said copyhold or customary hereditaments and the custom or customs of the manor or manors whereof the same were respectively held

and of consols,

would permit(*a*); AND BY THE INDENTURE NOW IN RECITAL a sum of £1500 Consolidated £3 per cent. Annuities therein mentioned to be then standing in the name of Edward R——, as such trustee as therein mentioned, and to have been purchased with certain money which, under an agreement in that behalf contained in the said indenture of release and settlement of the day of , 1786, was liable to be invested in the purchase of lands and hereditaments to be settled to certain uses under which the said W. Earl of *X* would have been tenant for life of the same lands and hereditaments, with remainder to the said W. W. Viscount *Y* in tail, was assigned by the said W. Earl of *X* and W. W. Viscount *Y* unto the said R. G., his executors, administrators and assigns, freed and absolutely discharged of and from the said estate tail of the said W. W. Viscount *Y*, expectant as aforesaid, and all other estates tail, as well of the said W. W. Viscount *Y* as of the said W. Earl of *X*, to the intent that the same might be held upon such trusts and with and subject to such powers, provisoes, agreements and declarations as the said W. Earl of *X* and W. W. Viscount *Y* by any deed or deeds, with or without power of revocation and new appointment, should from time to time or at any time direct, limit or appoint, and in default of and until and subject to such appointment upon

—that no surrender of copyholds,

the trusts in the indenture now in recital expressed; AND WHEREAS no surrender or other assurance or thing of or concerning the copyhold or customary tenements hereinbefore referred to or any of them has yet been made, executed or done in pursuance of the hereinbefore-recited covenant in

—of Earl's seisin in fee of estates secondly described,

that behalf; AND WHEREAS the said W. Earl of *X* is seised in fee simple of or has an absolute power of appointment over the manor or lordship of W. B——, in the county of , and the several messuages, farms and hereditaments hereinafter secondly described or referred to and expressed or

(*a*) This disentailing deed does not appear to have shown whether the Earl and Viscount were legal tenants for life and in tail respectively of the copyholds, or whether the copyholds were vested in trustees. The manner in which these were dealt with by the disentailing deed and by the settlement on which this precedent is founded is one which seems to be capable of equitably settling the copyholds in whomsoever they were legally vested, and may be useful where the state of the title to all the copyholds cannot be ascertained. If it can it should be shown, and the appropriate means of disposing of the tenements adopted.

intended to be hereby appointed, granted and conveyed, which the said W. Earl of *X* has from time to time purchased out of his own money, and which have from time to time been conveyed to him either in fee simple or to the ordinary uses in his favour and in bar of dower equivalent to an estate in fee simple; AND WHEREAS upon the treaty for the said intended marriage between the said W. W. Viscount *Y* and the said Lady A. *Z*, and in consideration thereof and also in consideration of the portion or fortune of the said Lady A. *Z* being settled by an indenture bearing even date with these presents for the benefit of the said W. W. Viscount *Y* and her the said Lady A. *Z* and the younger sons and daughters or other issue of the said intended marriage, it was agreed that the said W. Earl of *X* and W. W. Viscount *Y* should settle and assure the said several manors and hereditaments hereinafter first described or referred to and expressed or intended to be hereby appointed, granted and conveyed, and also the copyhold or customary hereditaments which are hereinafter particularly described or referred to, and also expressed or intended to be hereby covenanted to be surrendered and appointed or agreed to be settled, with their respective rights, royalties, members and appurtenances (subject as to certain parts thereof as aforesaid) To, for and upon the several uses, trusts, intents and purposes, and with, under and subject to the several powers, provisoes, declarations and agreements hereinafter limited, expressed, declared and contained, of and concerning the same respectively; AND that the said W. Earl of *X* and W. W. Viscount *Y* should also appoint and settle the hereinbefore mentioned sum of £1500 Consolidated £3 per cent. Annuities so standing in the name of E. R. as such trustee as aforesaid, To be held upon and for such trusts, intents and purposes, and under and subject to such powers, provisoes, declarations and agreements as are hereinafter also expressed and declared or contained of and concerning the same. AND WHEREAS upon the treaty for the said intended marriage it was also agreed by the said W. Earl of *X* that he should appoint, convey, settle and assure the said manor of W. B——, and the several messuages, tenements, lands and hereditaments which are hereinafter secondly described and expressed, or intended to be hereby respectively appointed, granted and conveyed, together with their respective rights, royalties, members and appurtenances, To, for and upon the several uses, trusts, intents and purposes, and with, under and subject to the several

—of agreement to settle estates first described and consols,

—of agreement to settle estates secondly described.

PRECEDENT IV.

powers, provisoes, agreements and declarations, hereinafter also limited, expressed and declared, of and concerning the same, In consideration whereof, and of the immediate provision hereby made by him the said W. Earl of *X* for the said W. W. Viscount *Y* and Lady A. *Z*, it was agreed that the said W. Earl of *X* should have a power of charging the whole of the said several manors and other hereditaments intended to be hereby settled as aforesaid to the extent and in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, and also in consideration of the said portion or fortune of the said Lady A. *Z* being so settled as aforesaid, and for settling and assuring the said manors or lordships and other hereditaments hereinafter first particularly mentioned or referred to, and expressed and intended to be hereby appointed, granted and conveyed, with their rights, royalties, members and appurtenances, to the uses, upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, expressed and declared of and concerning the same, The said W. Earl of *X* and W. W. Viscount *Y*, in exercise of the said power or authority given to them jointly in and by the hereinbefore in part recited indenture of the day of last, and by virtue thereof and of every other power or authority in anywise enabling them or either of them in this behalf, and as beneficial owners (*a*), Do and each of them as beneficial owner (*a*) DOTH by this deed DIRECT, LIMIT AND APPOINT that the said manor or lordship of L—— and all and singular other the manors or lordships, messuages, tenements, farms, lands, tithe rentcharges, fee farm rents and hereditaments of freehold tenure first hereinafter particularly described or referred to and hereinafter granted and conveyed or intended so to be, with all and singular the rights, royalties, members and appurtenances whatsoever to the same manors or lordships and other hereditaments belonging or in anywise appertaining, shall (but as to such parts thereof as are affected thereby, subject to the several hereinbefore-mentioned charges, terms and interests which are hereinafter also more particularly mentioned) henceforth go, remain and be TO THE USES, UPON THE TRUSTS, and with and subject to the powers, provisoes, agreements and declarations

Appointment by Earl and Viscount of

Estates first described.

(*a*) Conveyancing Act 1881, s. 7; Treatise, 321.

hereinafter limited, expressed, declared and contained of and concerning the same; AND THIS INDENTURE FURTHER WITNESSETH that in further pursuance of the said agreement and for the considerations hereinbefore expressed, and for settling and assuring the said manor or lordship of W. B. and other hereditaments secondly hereinafter particularly described and expressed and intended to be hereby appointed, granted and conveyed, with their rights, royalties, members and appurtenances, To the uses, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, expressed and declared of and concerning the same, The said Earl of *X*, in exercise of every power in anywise enabling him in this behalf and as beneficial owner (*a*), DOTH hereby DIRECT, LIMIT AND APPOINT that the said manor or lordship of W. B. and all and singular the several messuages or tenements, farms, lands and other hereditaments secondly hereinafter particularly described or referred to, and expressed or intended to be hereby granted and conveyed, or such of them as are subject to the same powers and authorities respectively, or to any of the same powers, together with all and every the rights, royalties, members and appurtenances whatsoever to the same manor or lordship and other hereditaments belonging or in anywise appertaining (except as hereinafter mentioned), shall henceforth go, remain and be TO THE USES, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, expressed, declared and contained of and concerning the same; AND THIS INDENTURE FURTHER WITNESSETH that in further pursuance of the said agreement, and for the considerations hereinbefore expressed, The said W. Earl of *X* and W. W. Viscount *Y* with respect to the several manors and other hereditaments first hereinafter described or referred to and expressed to be hereby assured, and according to their respective estates, rights and interests in and to the same hereditaments and as beneficial owners (*a*), DO and each of them as beneficial owner (*a*) DOTH hereby grant and convey, and the said W. Earl of *X* with respect to the manor and other hereditaments secondly hereinafter described or referred to and expressed to be hereby assured and as beneficial owner (*a*) DOTH hereby grant and convey unto the said *A* and *B* and their heirs, First (*b*), ALL, etc. [*parcels*],

Appointment by Earl of estates secondly described.

Grant of estates first and secondly described.

(*a*) Conveyancing Act 1881, s. 7; Treatise, 321.

(*b*) If the recitals accurately state the title, and the deed be executed by the Earl and Viscount with such if any solemnities as may be required by the power

PRECEDENT IV

To hold.

Secondly, ALL, etc. [*parcels*] (*a*), TO HAVE AND TO HOLD the said manors or lordships, messuages, tenements, farms, lands, tithes, tithe rentcharges, hereditaments, and all and singular other the premises hereinbefore first and secondly particularly described and hereby granted and conveyed, or expressed or intended so to be, with their and every of their rights, royalties, members and appurtenances, unto the said *A* and *B* and their heirs. Nevertheless as to such parts of the hereinbefore first described manors or lordships and other hereditaments as are comprised therein or affected thereby, subject to the said several terms of 600 years and 1000 years created by the hereinbefore mentioned indenture of the day of , 1786, and to the payment of the said sum of £12,000, so remaining to be raised under the trusts thereof, until the same shall be so paid and discharged as aforesaid, And as to such of the said manors or lordships and other hereditaments situate in the said county of as were comprised in the said hereinbefore mentioned indenture of settlement of the day of , 1828, as aforesaid, also subject to the said term of ninety-nine years determinable as aforesaid and thereby limited for raising or securing the said annuity of £500 in the nature of pin-money for the said F. Countess of *X* during the joint lives of herself and her said husband the said W. Earl of *X*, and for other the purposes aforesaid, and to the trusts of the same term, And as to the same hereditaments also subject to the said jointure rentcharge of £1200 by the same last-mentioned indenture also limited to the said F. Countess of *X* for her life in case she shall survive her husband the said W. Earl of *X*, and to the said powers and remedies and term of 200 years thereby limited or created for securing the same jointure rentcharge, and to the said term of 700 years by the last-mentioned indenture of settlement limited for raising portions for the children of the

in exercise of which the preceding appointment purports to be made, the uses of the hereditaments first described will be effectually transferred by that appointment, and this grant will, so far as those hereditaments are concerned, be superfluous. It has, however, been customary to add such a grant, and supposing there to be any defect in the disentailing deed or in the appointment, the grant would deprive that defect of importance by transferring the estates of the Earl and Viscount; but, as the estate of the Viscount is one in tail male only, it would be necessary, in order that his grant should pass the fee simple, that this deed should be enrolled. To that point, however, in such cases as that exhibited by this deed, the superabundance of caution to which the addition of the grant to the appointment must be attributed has not, I believe, been extended. To enrol this deed would be to incur the expense which the shorter disentailing deed creating the power was executed to avoid.

(*a*) As to "general words" and "all the estate," see Treatise, 289.

said W. Earl of *X* by the said F. Countess of *X* and to the trusts of the said terms respectively, and as to the last-mentioned manors or lordships and other hereditaments also subject to the powers of leasing, selling and exchanging and appointing new trustees, and other powers of the like nature which under or by virtue of the said indenture of release and settlement of the day of 1786, and the said Act of Parliament of the 53rd George III., are or will be exerciseable by or with the consent of the said W. Earl of *X* as tenant for life in possession of the same manors or lordships and other hereditaments, those powers being intended to be hereby preserved (*a*), And as to the whole of the said manors or lordships and other hereditaments hereinbefore first and secondly particularly mentioned, described or referred to, and expressed and intended to be hereby appointed, granted and conveyed respectively (so subject as aforesaid as to such parts thereof respectively as aforesaid), TO THE USES, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, expressed, declared or referred to of and concerning the same; AND IT IS HEREBY AGREED AND DECLARED by the said parties to these presents that the several directions, limitations, appointments, grants and conveyances hereinbefore respectively contained shall respectively operate and enure, and that the said *A* and *B* and their heirs shall stand seised of the said several manors or lordships, hereditaments and premises hereinbefore respectively granted and conveyed, or intended so to be, with their respective rights, royalties, members and appurtenances (subject as aforesaid), TO THE USES, upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, expressed, declared and contained or referred to concerning the same respectively—(that is to say), In the meantime and until the said intended marriage shall be solemnised, to such and the same uses and upon and for such and the same trusts, intents and purposes, and with and subject to such and the same powers, provisoes, declarations and limitations as the said manors and other hereditaments and premises at the time of or immediately before the execution of these presents respectively are or were or stood limited or subject to; And from and after the solemnisation of the said intended marriage, then AS TO and concerning the said manor or lordship of and other

To uses after expressed.

Declaration of uses.

Till marriage subsisting uses (*b*).

After marriage.

As to part.

(*a*) Treatise, 1508. (*b*) *Ib.* 334.

PRECEDENT IV.

Pin-money annuities (*a*).

the said hereditaments and premises situate in the county of etc., subject as aforesaid, TO THE USE AND INTENT that the trustees of this settlement shall thenceforth during the joint lives of the said W. Earl of *X*, W. W. Viscount *Y*, and Lady A. *Z*, by and out of the rents and profits of the last-mentioned manors and hereditaments, receive the clear yearly rentcharge of £300 sterling; and if the said W. Earl of *X* shall die during the joint lives of the said W. W. Viscount *Y* and Lady A *Z*, shall during the residue of the joint lives of the said W. W. Viscount *Y* and Lady A *Z*, by and out of the rents and profits of the last-mentioned manors and hereditaments, receive the clear yearly rentcharge of £400 sterling, the said rentcharges of £300 and £400 to be respectively paid by half-yearly payments on the day of and the day of during the continuance of the last-mentioned yearly rentcharges respectively, the first half-yearly payment of each of the said rentcharges to be made on such of the said days as shall happen first after the commencement of that rentcharge; AND SHALL PAY the same yearly rentcharges respectively to the said Lady A. *Z* for her sole and separate use, but so as that she shall not have power to anticipate or alienate the same; And subject to and after payment of the said yearly rentcharge of £300 so long as the same shall be payable, TO THE USE and intent that the said W. W. Viscount *Y* and his assigns shall during the joint lives of himself and his said father the said W. Earl of *X*, by and out of the rents and profits of the said manors and hereditaments situate in the said county of etc., receive the clear yearly rentcharge of £800 sterling without any deduction (except on account of property or income tax) (*c*), the said yearly rentcharge of £800 to be paid to the said W. W. Viscount *Y* and his assigns by half-yearly payments on the day of and the day of in every year, the first half-yearly payment thereof to be made on such of the said days of payment as shall first happen after the solemnisation of the said intended marriage, AND TO THE FURTHER USE AND INTENT that in case the said intended marriage shall be solemnised and the said Lady A. *Z* shall survive the said W. W. Viscount *Y* her said intended husband, and the said W. Earl of *X* shall be living at the time of the death of the said W. W. Viscount *Y*,

Annuity to Viscount during his and Earl's joint lives (*b*)

Jointure annuities (*d*)

(*a*) Treatise, 862, 931; above, p. 3, note.
(*b*) As to rentcharges, see Treatise, 931; as to apportionment, *ib.* 1004.
(*c*) *Ib.* 926.
(*d*) As to jointures, see *ib.* 974.

then the said Lady A. *Z* and her assigns shall from the time of the death of the said W. W. Viscount *Y*, during the remainder of her life, or unless and until the substituted yearly rentcharge or annual sum of £700 next hereinafter contingently limited to her shall in the event in that behalf hereinafter mentioned accrue and become payable, receive by and out of the rents and profits of the said manor and other hereditaments situate in the said county of the yearly rentcharge of £600 sterling. AND that in case the said W. Earl of *X* shall after the death of the said W. W. Viscount *Y* die in the lifetime of the said Lady A. *Z*, and there shall be issue male of the said intended marriage living at the death of the said W. Earl of *X*, then and in that case, but not otherwise, the said Lady A. *Z* and her assigns shall from and after the death of the said W. Earl of *X* and thenceforth during the then remainder of her life receive out of the rents and profits of the said manor and other hereditaments situate in the county of , in lieu of the said yearly rentcharge of £600, an increased yearly rentcharge of £700 sterling, AND that in case the said Lady A. *Z* shall survive the said W. W. Viscount *Y*, and the said W. Earl of *X* shall have previously died, so that the said Lady A. *Z* shall have become the Countess of *X*, then and in that case the said Lady A. *Z* and her assigns shall from the time of the death of the said W. W. Viscount *Y*, during the then remainder of her life, receive by and out of the rents and profits of the said manors and hereditaments situate in the county of the yearly rentcharge of £1000 sterling, Such original yearly rentcharge of £600 or £1000 as the case may be, and such increased or substitutionary yearly rentcharge of £700 in case the same shall become payable as aforesaid, to be paid without any deduction whatsoever (except on account of income tax and in the case of the rentcharge of £600 except on account of succession duty) (*a*) and to be in full for the jointure of the said Lady A. *Z*, and in bar of all dower and freebench which she can or otherwise could have or claim, and for her sole and separate use without power to alienate the same during her now intended coverture, AND every of the said yearly rentcharges or annual sums which shall in the event and for the time being be payable to be paid and payable unto the said Lady A. *Z* or her assigns by half-yearly payments on the 24th day of June and the 25th day of December in every year, the first payment of the said original yearly

(*a*) Treatise, 926, 928.

PRECEDENT IV.

rentcharge of £600 or £1000 as the case may be to be made on such of the said half-yearly days as shall first happen after the death of the said W. W. Viscount *Y*, and the first payment of the said substitutionary yearly rentcharge of £700 to be made on such of the said half-yearly days as shall first happen after the same rentcharge shall have first become payable, AND TO THE FURTHER USE AND INTENT, in case the said W. W. Viscount *Y* shall die in the lifetime of the said W. Earl of *X* leaving any child or children by the said Lady A. *Z* surviving him, that then the trustees of this settlement shall during the remainder of the life of the said W. Earl of *X* (subject and without prejudice to the raising and paying of the said yearly rentcharge or annual sum of £600, if and so long as the same shall be subsisting, and to the remedies and powers for raising and enforcing payment thereof) receive out of the yearly rents and profits of the said manors and other hereditaments situate in the said county of for the maintenance, support and education of such child or children respectively, the yearly rentcharges hereinafter mentioned (that is to say), In case and so long as there shall be only one such surviving child, then the yearly rentcharge of £300 (*a*), clear of all deductions except income tax and succession duty (*b*), and in case and so long as there shall be more than one surviving child, then a yearly rentcharge increased beyond the last-mentioned amount by the additional sum of £150, clear of all deductions except succession duty, for every such surviving child beyond the first, but not exceeding in the whole the yearly sum of £900, The last-mentioned yearly rentcharges to be respectively paid by half-yearly payments on the 24th day of June and the 25th day of December in every year of the then accrued and unpaid parts thereof respectively; And that the trustees of this settlement shall, either themselves or himself, pay and apply the last-mentioned yearly rentcharge or rentcharges for the maintenance, support and education of such child or children as aforesaid accordingly, in such manner and in such proportions as the trustees of this settlement shall think just and expedient, or shall pay the money to be appropriated to the maintenance, support and education of any such child or children to the guardian or respective guardians for the time being of such child or children, to be by

Annuity for maintenance of children after death of Viscount and during life of Earl.

(*a*) As to rentcharges, see Treatise, 931; as to apportionment, *ib.* 1004.
(*b*) *Ib.* 926.

such guardian or guardians applied at his, her or their discretion for or towards that purpose, AND AS TO, FOR AND CONCERNING the said manor and other hereditaments situate in the said county of , subject to and charged and chargeable with the said yearly rentcharges or annual sums hereinbefore expressed to be hereby limited, or to such of them as according to the events aforesaid shall for the time being be payable, and to the powers and remedies by Act of Parliament or otherwise provided for securing the same respectively, TO THE USE of the said *A* and *B*, their executors, administrators and assigns, for and during the term of 500 years, to be computed from the solemnisation of the said intended marriage and thence next ensuing, without impeachment of waste, UPON and for THE SEVERAL TRUSTS, intents and purposes, and with and subject to the several powers, provisoes, agreements and declarations hereinafter expressed, declared and contained of and concerning the same; AND AS TO, FOR, AND CONCERNING all and singular the other manors or lordships and hereditaments hereinbefore first and secondly described and expressed or intended to be hereby appointed, granted and conveyed respectively, whereof no uses, to take effect from and after the solemnisation of the said intended marriage, are hereinbefore declared, but subject to such subsisting rents, terms and charges as aforesaid as to such parts thereof respectively as aforesaid, AND ALSO as to, for and concerning the said manor of and other hereditaments situate in the said county of , whereof uses to take effect from and after the solemnisation of the said intended marriage are hereinbefore declared, but both subject as last aforesaid, and also subject to the yearly rentcharges or annual sums hereinbefore respectively limited out of the last-mentioned manor or lordships and other hereditaments, and to the said powers and remedies for securing the same respectively, and to the said term of 500 years hereinbefore limited in the same manors and other hereditaments, and to the trusts thereof respectively which are hereinafter declared, TO SUCH USES and in such manner and form as the said W. Earl of *X* and W. W. Viscount *Y*, by any deed or deeds with or without power of revocation and new appointment, shall from time to time or at any time appoint, AND in default of and until such appointment, and as to such part or parts of the said manors or lordships

Term of 500 years.

Upon trusts after expressed.

As to all settled hereditaments.

To uses Earl and Viscount shall jointly appoint (*a*).

(*a*) As to general powers of this kind, see Treatise, 1071; and to the effect on such a power as this of the provisions of the Succession Duty Act with reference to general powers, see *ib.* 1064.

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and other hereditaments of which no such appointment shall be made, or as to the estate or interest in the same manors and other hereditaments or any part or parts thereof to which no such appointment shall extend, TO THE USE of the said W. Earl of *X* and his assigns during his life without impeachment of waste (*a*); AND from and immediately after the death of the said W. Earl of *X*, TO THE USE of the said W. W. Viscount *Y* and his assigns during his life, without impeachment of waste (*a*), AND from and immediately after the death of the said W. W. Viscount *Y*, TO THE USE of the first and every other son of the body of the said W. W. Viscount *Y*, severally and successively and in remainder one after another, as they shall be in priority of birth, and of the heirs male of the body of every such son, [*limitations to the second and third, being the then living sons of the said W. Earl of X successively for life, with remainder to the first and other sons of each in tail male*], and in default of such issue TO THE USE of the fourth and every other son of the said W. Earl of *X* who shall hereafter be born, severally and successively, in remainder one after another as they shall be in priority of birth, and of the heirs male of the body of every such after-born son, AND in default of such issue TO THE USE of the said *K* and *L*, their executors, administrators and assigns, during the term of 1000 years, to commence from the time of the determination or determination and failure respectively of the limitations to the use of such issue male as aforesaid, without impeachment of waste, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same term, And from and after the determination of the said term of 1000 years, and in the meantime subject thereto and to the trusts thereof [*Here follow limitations to the use of the brothers of the Earl of* X *successively for their lives and their first and other sons in tail male*], and in default of such issue TO THE USE of the said W. W. Viscount *Y*, his heirs and assigns for ever [*Insert proviso as to arrears of pin money*, above, p. 5]. AND AS TO, FOR, AND CONCERNING the said term of 500 years hereinbefore limited in use to the said *A* and *B*, their executors, administrators and assigns as aforesaid, It is hereby

To use of Earl for life.

To use of Viscount for life.

To use of his sons successively in tail male (*b*).

To uses for living younger sons of Earl and their issue.

To use of after-born sons of Earl in tail male.

Term of 1000 years.

To use of brothers of Earl and their issue.

To use of Viscount in fee (*c*).

Trust of term of 500 years to raise portions (*d*).

(*a*) Treatise, 165, 863, 890, 896.

(*b*) With reference to the limitations usual in strict settlements of land, see *ib.* 1169; and in family settlements in particular, *ib.* 1175.

(*c*) As to the ultimate limitation, see *ib.* 1186.

(*d*) The trusts of this portions term are in a more common form than those in Precedent I., which, with notes thereto, see above, pp. 6—13.

agreed and declared that the same is so limited to them upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same (that is to say) UPON TRUST, in case there shall be any child or children (*a*) of the said W. W. Viscount *Y* by the said Lady A. *Z*, other than an eldest or only son for the time being entitled under the limitations hereinbefore contained to the said manors and other hereditaments hereby appointed, granted and conveyed as aforesaid, for an estate in tail male in possession or in remainder immediately expectant on the death of the survivor of them, the said [*Earl and Viscount*], then that the trustees of this settlement shall, either in the lifetime of the said [*Earl and Viscount*] or of the survivor of them, with their or his consent in writing, or else after the death of such survivor (but subject and without prejudice to the raising and paying of such of the said annual sums hereinbefore respectively limited for the pin money and jointure of the said Lady A. *Z* as may become payable, and to the powers and remedies for recovering the same) by demise, sale or mortgage of the said manors and other hereditaments comprised in the said term of 500 years, or of a competent part or of competent parts thereof, for all or any part of the same term, or by and out of the annual rents, issues and profits thereof, or by bringing actions against tenants or occupiers of the same premises or any of them for the rents then in arrear, or by all or any of the ways or means aforesaid, or by such other ways or means as the trustees of this settlement shall think fit, levy and raise or borrow and take up at interest for the portion or portions of such child or children as last aforesaid (other than an eldest or only son for the time being entitled as aforesaid), such sum or sums of money as hereinafter mentioned, (that is to say) IF there shall be but one such child (not being an eldest or only son entitled as aforesaid), the sum of £ sterling as and for the portion of such one child, and to be paid and payable and to become vested in such one child at or upon such age, day or time as the said W. W. Viscount *Y* and Lady A. *Z*, at any time or times during their joint lives,

(*a*) This definition of the class of portionists is substantially that described by the late Mr. Joshua Williams in the passage cited from him in the Treatise, 1106. A definition which I have framed in substitution for it is printed above, p. 6. Yet another, substantially that used in Mr. Davidson's collection (3 Dav. Conv., 3rd ed. 1246), is employed in the power to charge with portions in this precedent, below, p. 54. With reference to the first and third of these forms, see Treatise, 1106—1109.

PRECEDENT IV. by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, shall (subject and without prejudice to the proviso hereinafter contained in regard to the raising of the same in the lifetime of the said Earl) jointly direct or appoint; and in default of such joint direction or appointment, or so far as any such joint direction or appointment shall not extend, then as the said Viscount *Y*, in case he shall survive the said Lady A. *Z*, shall at any time or times after her decease, by any deed or deeds with or without power of revocation and new appointment, or by his last will or by any codicil or codicils thereto (subject and without prejudice as aforesaid), direct or appoint, and in default of such direction or appointment, or so far as any such direction or appointment shall not extend, to be an interest vested in such younger child being a younger son at his age of twenty-one years, or being a daughter at her age of twenty-one years or day of marriage, which shall first happen, and to be paid to him or her at or upon such age or day accordingly, if the age or day shall be attained or happen after the decease of the survivor of them the said [*Earl and Viscount*]; but if the same age or day shall be attained or happen during the life of the said [*Earl and Viscount*] or the survivor of them, then the last-mentioned sum shall be paid immediately after the decease of such survivor, unless they or he shall by any writing under their or his hands or hand consent that the same shall be raised and paid in their or his lifetime; AND if there shall be two such children as last aforesaid and no more (neither of them being an eldest or only son for the time being so entitled as aforesaid) then the sum of £ sterling for the portions of those two children; AND if there shall be three such children as aforesaid and no more (none of them being an eldest or only son for the time being so entitled as aforesaid), then the sum of £ sterling for the portions of those three children; AND if there shall be four such children as aforesaid and no more (none of them being an eldest or only son for the time being so entitled as aforesaid), then the sum of £ sterling for the portions of those four children; AND if there shall be five or more such children as aforesaid (none of them being an eldest or only son for the time being so entitled as aforesaid), then the sum of £ sterling for the portions of those five or more children, the said sum and sums of money intended for the portions of

such children as aforesaid (being more than one), and none of them being an eldest or only son for the time being so entitled as aforesaid, to be shared and divided between or among such children in such parts, shares or proportions, and to be vested in and to be paid to such children respectively, at or upon such ages, days or times, and to be subject to such charges, provisoes and limitations, for the benefit of some or one of the said children, and in such manner as the said Viscount *Y* and Lady A *Z* shall at any time or times during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment (but subject and without prejudice as aforesaid), direct or appoint, and in default of any such direction or appointment, or so far as any such shall not extend, then as the said Viscount *Y*, in case he shall survive the said Lady A. *Z*, shall at any time or times after her decease, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, or by his last will and testament in writing or any codicil or codicils thereto, subject as aforesaid, direct or appoint, AND IN DEFAULT of and subject to such direction or appointment to be equally divided between or among such children as aforesaid (none of them being an eldest or only son for the time being so entitled as aforesaid), share and share alike, the share or respective shares of such of the said children as shall be a younger son or sons to become a vested interest or vested interests in him or them respectively, at his or their age or respective ages of twenty-one years, and the share or respective shares of such of them as shall be a daughter or daughters to become a vested interest or vested interests in her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, and to be paid and payable at or upon the same ages or days accordingly, in case the same shall be attained or happen after the decease of the survivor of them the said [*Earl and Viscount*], but in case the same shall respectively be attained or happen in the lifetime of the said [*Earl and Viscount*], or of the survivor of them, then the said share or shares shall be paid immediately after the decease of that survivor, unless they or he shall by writing signify their or his consent that the same shares or any of them shall be raised and paid in their or his lifetime;

PRECEDENT IV.

Hotchpot (*a*).

PROVIDED ALWAYS, and it is hereby agreed and declared, that in case any appointment shall be made in pursuance of the powers aforesaid or either of them which shall extend to a part or parts only of the sum or sums of money hereby provided for the portion or portions of such child or children as aforesaid (none of them being an eldest or only son for the time being so entitled as aforesaid) then and in that case any child entitled to a portion or share under such appointment shall not be entitled to any share of and in the remaining or unappointed part or parts of the money hereby provided for portions as aforesaid until he or she shall have brought his or her appointed share into hotchpot and shall have accounted for the same accordingly, unless the persons or person making such appointment shall declare a contrary intention in writing, executed in manner required by the power for the validity of such appointment; AND UPON FURTHER TRUST that the trustees of this settlement shall in the meantime, from and after the decease of the survivor of the said [*Earl and Viscount*], and until the portion or portions hereby provided for the younger sons and daughters of the said intended marriage shall respectively become payable as aforesaid, by and out of the annual rents and profits of the said manor and other hereditaments comprised in the said term of 500 years, raise and levy for the maintenance and education of such child or children as aforesaid (none of them being an eldest or only son for the time being entitled as aforesaid), such yearly sum for each child, not exceeding what interest after the rate of 4 per centum per annum on the portion or part of a portion to which he or she shall be then expectantly entitled under the trusts or powers aforesaid, would amount to, as the trustees or trustee for the time being of this settlement shall think fit, And shall at their or his discretion, either themselves or himself, pay and apply such yearly sum for the maintenance and education of such child accordingly, or shall (if they or he shall think proper), pay such yearly sum or sums of money to the guardian or guardians for the time being of such child, to be by such guardian or guardians applied for or towards his or her maintenance and education; AND IT IS HEREBY AGREED AND DECLARED that such yearly sum or respective yearly sums as are last hereinbefore authorised to be raised for the maintenance and education of such younger child or children as aforesaid shall

Maintenance money (*b*).

(*a*) As to hotchpot clauses, see Treatise, 1220. (*b*) *Ib.* 1135.

be raised in equal half-yearly payments, on the 24th day of June and the 25th day of December in every year, the first payment to be made on such of those days as shall first happen after the decease of the survivor of them the said Earl of *X* and Viscount *Y*; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if there shall be more than one such child for whom portions are hereby provided as aforesaid, and any of them being a younger son or sons shall depart this life, or become an eldest or only son entitled as aforesaid under the age of twenty-one years, or being a daughter or daughters shall depart this life under the age of twenty-one years without being or having been married, THEN and in such case, and in default of and subject to any such appointment as aforesaid, the portion hereby intended to be provided for every such son so dying or becoming such eldest or only son as aforesaid, and for every such daughter so dying as aforesaid, or so much and such part thereof respectively as shall not be sooner advanced for any younger son or sons as hereinafter mentioned, shall thereupon become subject to the same trusts, powers and provisoes for the benefit of the others or other of such children (not being such eldest or only son for the time being entitled as aforesaid) as are hereby created of or concerning the residue of the money hereby provided for the portions of the said other younger children or child, or as near thereto as circumstances will permit, and the benefit of such accruer as aforesaid shall extend as well to the accruing as to the original portion or portions; BUT so nevertheless that no one child shall by survivorship, or by the exercise of any of the aforesaid powers or otherwise, have or be entitled to more than the sum of £ for his or her portion: PROVIDED ALSO that if all such younger children as aforesaid, being respectively a son or sons, shall die or become an eldest or only son entitled as aforesaid under the age of twenty-one years, or being a daughter or daughters shall die under the age of twenty-one years and unmarried, then and in that case the money hereinbefore directed to be raised for the portions of the said younger children, or so much thereof as shall not have become indefeasibly vested in any of them under the aforesaid powers of appointment, or one of them, or under the power of advance-

Accruer clause (*a*).

Portions money not wanted to sink (*b*).

(*a*) Treatise, 1117, 1225.
(*b*) *Ib.* 1260. This clause is, it is conceived, superfluous.

PRECEDENT IV.

ment hereinafter contained, shall sink into the inheritance of the said manor and hereditaments comprised in the said term of 500 years, and the trusts for raising the same money shall thereupon cease; PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees of this settlement, at any time or times during the life of the said Earl of *X* and Viscount *Y*, or of the survivor of them, with their or his consent expressed in writing, and at any time or times after the decease of such survivor at the discretion of the trustees of this settlement, to raise and levy by all or any of the aforesaid ways and means (subject nevertheless and without prejudice as aforesaid), any part or parts not exceeding altogether a moiety of the portion to which every or any younger son of the said intended marriage shall for the time being be expectantly entitled under the trusts or powers aforesaid, and with the consent in writing of the said Viscount *Y* during his life, and after his decease at the discretion of the trustees of this settlement, to pay and apply the money so to be raised as last aforesaid for the purpose of placing or putting such younger son in or to any profession or employment or for his instruction therein, or otherwise for his benefit or advancement in the world, notwithstanding that his or their portion or portions shall not then have become payable or indefeasibly vested; PROVIDED ALWAYS that no sale or mortgage of the said manor and other hereditaments comprised in the said term of 500 years or any part thereof for raising such portion or portions or such advancement as hereinbefore mentioned, or any part or parts thereof, shall be made in the lifetime of the said W. Earl of *X*, unless with his consent testified by some writing under his hand; PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said W. W. Viscount *Y* shall in his lifetime give or advance any sum or sums of money for or towards the preferment or advancement of any child or children of the said intended marriage, being a younger son or sons, for placing him or them in any profession or employment or for his or their instruction therein, or for his or their benefit or advancement in the world, or being a daughter or daughters for her or their portion or portions on marriage, THEN and in every such case, if any such sum or sums of money to be so advanced shall be equal to or exceed the expectant portion or portions of such child or children

Advancement (*a*).

No mortgage in life of Earl without his consent.

Advancements by Viscount to be treated as on account of portions (*b*).

(*a*) Treatise, 1136. (*b*) *Ib.* 1139; and below, p. 279.

respectively, such advanced sum or sums shall be accounted in full for his, her or their portion; but if such advanced sum or sums shall be less than his, her or their said portion or portions, then such advanced sum or sums shall be accounted as part of his, her or their said portion or portions, if in either of the said cases the said W. W. Viscount *Y* shall declare his intention to be to that effect by writing under his hand (*a*); and in case any child or children shall be so advanced as aforesaid by the said W. W. Viscount *Y*, and he shall declare his intention in writing to that effect, the said W. W. Viscount *Y* shall stand in the place of the child or children so advanced as aforesaid in respect of the sum or sums of money so by him advanced, and to the extent of such advancement he shall be considered as a purchaser of the portion or portions of that child or those children; AND IT IS HEREBY AGREED AND DECLARED that the term of 1000 years hereinbefore limited in use to the said *K* and *L*, their executors, administrators and assigns, is limited to them upon the trusts and with and subject to the powers, agreements and declarations hereinafter expressed and declared concerning the same, (that is to say) UPON TRUST that after the death of the said W. Earl of *X*, and when and if all the limitations hereinbefore contained of the manors and hereditaments comprised in the same term to his sons, grandsons and other issue male, shall have determined or determined and failed respectively, and if any daughter or daughters of the said W. Earl of *X* who shall have attained or shall attain the age of

Trust of term of 1000 years (*b*).

On failure of male issue of Earl,

If there be daughters or

(*a*) See below, p. 279. Instead of what follows in the text, which is superfluous, Mr. Sanders (2 Uses, 4th ed., 265) suggested the following clause: "And in case any child or children shall be so advanced as aforesaid by the said , he the said shall (unless he shall declare a contrary intention in writing) stand in the place of the child or children so advanced as aforesaid, in respect of the sum or sums of money so by him given by way of advancement as aforesaid, and, to the extent of such advancement, shall be considered as a purchaser of the share or shares of such child or children." Another intent was expressed as follows in the will upon which the case of *Cooper* v. *Cooper* (L. R. 8, Ch. 813) arose: "And to the intent (unless the same shall be directed to the contrary by my said daughter and W. D. C. or the survivor of them making such advancement as aforesaid, to be expressed in manner aforesaid) to exonerate and discharge the B. estates from the portion or share of the younger child or children to whom such advancement shall be made as aforesaid, or so much and such part of the same portion or share as such sum or sums of money shall amount to."—*Ib.* 814.

(*b*) With reference to the occasions on which a provision of this kind is made, see Treatise, 1099.

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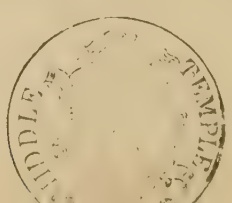
issue of daughters of Earl or Viscount,

twenty-one years or shall have married or shall marry, or any child or children or other issue of any then deceased daughter or daughters of the said W. Earl of *X*, shall be living at his death and the time of such determination or determination and failure respectively as aforesaid, or if at the last-mentioned time there shall be living any daughter or daughters of the said W. W. Viscount *Y* who shall have attained or shall attain the age of twenty-one years or shall have married or shall marry, or any child or children or other issue of any then deceased daughter or daughters of the said W. W. Viscount *Y*,

To raise £150,000,

Then the said *K* and *L* or the survivor of them shall, with all convenient speed, by mortgage or sale or other disposition of all or any part or parts of the several manors and other hereditaments comprised in the said term of 1000 years, for all or any part of that term, or by and out of the rents, issues and profits of the same premises, or by any other ways or means whatsoever as to them the said *K* and *L* or the survivor of them shall seem meet (but subject as to such of the last-mentioned hereditaments as are hereby charged therewith or affected thereby to the aforesaid jointure yearly rentcharge of £700 or £1000 as the case may be, and to the powers and remedies for securing the same), levy and raise the sum of £150,000 sterling, with interest for the same after the rate of 4 per centum per annum, to commence from the time of the death of the said W. Earl of *X*, or of such determination or determination and failure as last aforesaid, which event shall last happen, and shall stand possessed of and interested in one moiety of the said sum of £150,000 and the interest thereof upon the trusts hereinafter expressed concerning the same, (that is to say) IN TRUST for all and every the daughters and daughter of the said W. Earl of *X* who shall attain the age of twenty-one years or be married, and shall be living at the time of such determination or determination and failure as last aforesaid, and all and every the children or child and other issue then living of any daughters or daughter of the said W. Earl of *X* who shall be then dead, to be equally divided among such daughters and such child or children and other issue of any then deceased daughters or daughter of the said W. Earl of *X* as aforesaid, and if there shall be but one daughter of the said W. Earl of *X* who shall attain the age of twenty-one years or marry, or, there not being any such daughter as last aforesaid, if there shall be issue of only one deceased daughter of the said W. Earl of *X* who shall

Half for daughters and issue of daughters of Earl.



be living at the time of such determination or determination and failure as last aforesaid, Then the whole of the said moiety of the said sum of £150,000 shall be paid to such only daughter or issue of a deceased daughter as last aforesaid; PROVIDED ALWAYS, and it is hereby agreed and declared, that if any daughter or daughters of the said W. Earl of *X* shall attain the age of twenty-one years or marry and shall be living at the time of such determination or determination and failure as last aforesaid, and there shall be also then living any child or children or other issue of a deceased daughter or daughters, or in case there shall be then living only issue of deceased daughters, Then, and in either of the said cases, the children or child and other issue if any of any deceased daughter shall be entitled (and in equal shares, *per stirpes* only and not *per capita*, amongst themselves if more than one) to the share intended for his, her or their deceased mother, of and in the hereinbefore-mentioned moiety of the said sum of £150,000 and the interest thereof, or to which she would have been entitled if living, and to no more; But in case there shall not be any daughter of the said W. Earl of *X* or any issue of any such daughter who shall attain a vested interest in the said moiety of the said sum of £150,000 under or by virtue of the trusts hereinbefore declared of and concerning the same, UPON TRUST that the said *K* and *L* and the survivor of them shall stand and be possessed of and interested in the said moiety of the said sum of £150,000 and interest upon the same trusts as are hereinafter declared of the other moiety of the said sum of £150,000 and the interest thereof; AND UPON FURTHER TRUST that the said *K* and *L* and the survivor of them shall stand and be possessed of and interested in the said other moiety of the said sum of £150,000 and the interest thereof [*similar trusts for daughters and issue of daughters of W. W. Viscount Y, and proviso that issue shall take* per stirpes, *and power to raise annual sum not exceeding £4 per cent. on expectant portion:* above, p. 50]. PROVIDED ALSO, and it is hereby further declared, that any daughter either of the said W. Earl of *X* or of the said W. W. Viscount *Y* receiving the said sum of £150,000 or any share thereof, shall accept the same in satisfaction of any other portion otherwise raiseable for her benefit out of any of the manors and hereditaments herein comprised, and which shall not have been so raised; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto,

Daughters and issue of daughters to take *per stirpes*.

On failure of above trusts,

On trusts after expressed of other half.

Other half on like trusts for daughters and issue of daughters of Viscount.

Shares of £150,000 to be in satisfaction of other portions.

Earl empowered to

PRECEDENT IV. charge £40,000 (*a*).

that it shall be lawful for the said W. Earl of *X* at any time or times after the solemnisation of the said intended marriage, by any deed or deeds with or without power of revocation and new appointment, or by his last will in writing or by any codicil or codicils thereto, to subject and charge all or any part or parts of the said manors and other hereditaments hereinbefore expressed to be hereby appointed, granted or conveyed, with the appurtenances (but subject nevertheless, as to such of the said manors and hereditaments as are situate in the said county of , to the said charges, limitations and trusts which are hereinbefore respectively limited or directed to take effect antecedently to or with priority over the estate hereby limited to the said W. Earl of *X* for his life in the same manors and other hereditaments), to and with the payment of any sum or sums of money not exceeding in the whole the sum of £40,000, together with interest thereon after any rate not exceeding per cent. per annum, for his own absolute use and benefit or otherwise, to be paid, applied and disposed of unto such person or persons and upon and for such trusts, intents and purposes as the said W. Earl of *X* shall think fit; AND ALSO by the same or any other deed or deeds, or by his last will in writing or any codicil or codicils thereto, to appoint or devise the said manors and other hereditaments which he shall so charge as aforesaid (but as to such parts thereof as aforesaid subject as aforesaid) to any person or persons for any term or terms of years, without impeachment of waste, upon any usual trusts, or subject to any usual powers for raising or securing the same sum or sums of money with such interest thereon as aforesaid, so as the term or terms to be so created, and which shall be mortgaged for securing any such principal and interest money be made redeemable on payment of the sum or sums of money and interest which shall be so charged by virtue of this present power as aforesaid by the person or persons who for the time being shall be entitled or interested in remainder or reversion either at law or in equity to or in the hereditaments and premises so to be appointed or demised as aforesaid [*Similar power to Viscount, either in Earl's lifetime or afterwards, to charge with* £20,000]. PROVIDED ALWAYS that no sum of money charged on the said settled hereditaments or any part thereof by the said W. W. Viscount *Y* under the power last hereinbefore contained shall carry interest during the life of the said W. Earl of *X* as against the hereditaments to be so

Viscount empowered to charge £20,000,

(*a*) Treatise, 1151.

PRECEDENT IV. —jointure for after-taken wife, —portions for children of such marriage.

charged unless the said W. Earl of *X* shall concur in charging or securing the same [*Power to Viscount to charge with a rentcharge for the jointure of any other wife after decease of survivor of Earl and Viscount, and with a gross sum of money for the portions for children of such marriage:* above, pp. 13, 14]. PROVIDED ALSO, and it is hereby further agreed and declared, that it shall be lawful for every of the persons to whom estates for life are hereby limited, after the death and failure of issue male of the said W. W. Viscount *Y*, of and in the said manors and other hereditaments hereby appointed, granted and conveyed, either before or after he shall by virtue of the limitations hereinbefore contained become entitled for an estate in possession as distinguished from remainder or reversion to the same manors and other hereditaments, by any deed or deeds, with or without power of revocation and new appointment, or by his last will or any codicil or codicils thereto, to limit or appoint unto and to the use of any woman or women whom he may marry or may have married for her life or their respective lives, and in full or in part only for or in the nature of a jointure and in bar or without being in bar of dower and freebench, and to take effect immediately after his death, any yearly rentcharge or yearly rentcharges not exceeding for any such woman the clear yearly sum of £1000 sterling, without any deduction (except on account of succession duty and property or income tax), to be issuing out of and charged and chargeable upon all or any part of the said manors and other hereditaments hereby appointed, granted and conveyed or intended so to be, and to be payable by such periodical payments as the person exercising this power shall in any such manner as aforesaid appoint; But so nevertheless that the same shall be without prejudice to all uses and powers so limited or capable of being so exercised as to affect the manors and other hereditaments so to be charged as last aforesaid in priority to the estate of the person exercising this power (*b*), And so as that no deed, will or codicil whereby this power shall purport to be exercised by any person who shall not at the time of executing the same deed, will or codicil have become by virtue of the limitations herein contained entitled for an estate in possession as distinguished from remainder or

Tenants for life empowered to charge jointures (*a*).

Exercise ineffectual unless donee or his issue entitled in possession (*c*).

(*a*) As to powers to jointure, see Treatise, 992.
(*b*) As to priorities of estates limited in exercise of powers, see *ib.* 396, and also 994.
(*c*) *Ib.* 994.

PRECEDENT IV.

reversion to the premises subject to the power last hereinbefore contained shall operate in exercise of the same power unless and until that person shall have or some of his issue shall have or if of the age of twenty-one years would have so as aforesaid become entitled for such an estate in possession as last aforesaid to the premises; AND SO AS THAT no greater annual amount than £6000 shall be payable at one and the same time on account of any jointures secured hereby or under the powers hereof out of the said settled manors and hereditaments, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; AND IT IS HEREBY DECLARED THAT if at any time or times the jointure rentcharges charged on the said hereditaments as aforesaid shall or otherwise would exceed in yearly amount the said sum of £6000, Then and in every such case the last jointure or jointures in point of limitation shall be suspended or reduced so far and so long as may be necessary for reducing the total yearly amount thereof to the sum of £6000; AND that for the purpose of ascertaining what money shall have been effectually charged by instruments purporting to execute this power, the rentcharges purporting to be charged in exercise of this power shall have preference among themselves according to the priority in order of limitation of the life estates of the persons by whom the same shall respectively be or purport to be charged; PROVIDED ALSO, and it is hereby agreed and declared, that it shall be lawful for every of them the persons to whom estates for life are hereinbefore limited after the death and failure of issue male of the said W. W. Viscount *Y* of and in the said manors or lordships and other hereditaments, either before or after he shall by virtue of the limitations hereinbefore contained become entitled in possession, as distinguished from remainder or reversion, to the same manors or lordships and other hereditaments by virtue of and under the limitations aforesaid by any deed or deeds with or without power of revocation and new appointment, or by will or codicil, to subject and charge all or any part of the said manors or lordships and other hereditaments hereby severally limited to them in use as aforesaid, with the payment of any principal sum or sums of money not exceeding in the whole £ sterling for the portion or portions of his child or children, (other than a son who before attaining the age of twenty-one

Not more than £6000 a year to be payable for jointures.

Tenants for life empowered to charge portions (*a*).

(*a*) As to powers to charge portions, see Treatise, 1142.

years shall by virtue of the limitations herein contained become entitled whether in possession or remainder to the estate in tail male immediately succeeding the estate for life of the person then exercising the power (*a*),) with interest for the same at any rate not exceeding 4 per cent. per annum, to commence immediately after the decease of the person for the time being exercising this present power, such portion or portions to vest and become payable at such time or times, in such shares and proportions and with such clauses of survivorship, as the person exercising this present power shall by the same or any other deed or deeds with or without power of revocation and new appointment, or by will or codicil, direct and appoint, and for the purpose of raising such portion or portions and interest as last aforesaid by the same or any deed or deeds, or by will or codicil, to limit or appoint, the said manors and other hereditaments which he shall so charge with any portion or portions to any person or persons for any term or terms of years without impeachment of waste, upon any trusts for raising and securing such portion or portions and interest as last aforesaid; But so as that every exercise of this power shall be without prejudice to all uses and powers so limited or capable of being so exercised as to affect the manors and hereditaments so to be charged as last aforesaid in priority to the life estate of the person exercising the same power (*b*); AND SO AS THAT no deed, will or codicil whereby this power shall purport to be exercised by any person who at the time of executing the same deed, will or codicil shall not have become by virtue of the limitations hereinbefore contained entitled for an estate for life in possession, as distinguished from remainder or reversion, to the hereditaments in respect of which this power may be then

Exercise ineffectual unless donee or his issue become entitled in possession (*c*).

(*a*) For other definitions of portionists, see above, pp. 6, 43. Instead of the definition in the text, which is in effect that used in Mr. Davidson's "Conveyancing," vol. iii., 3rd ed., p. 989, I submit for consideration the following form: "child or children other than a son who at the time of his attaining the age of twenty-one years or of his father's death, whichever shall last happen, shall by virtue of the limitations herein contained, or whose descendant shall at that time and by virtue of the same limitations and by descent, be entitled in remainder or possession to the estate in tail male hereby limited in immediate succession to the estate for life of the person then exercising this power."

(*b*) As to priorities of estates limited in exercise of powers, see Treatise, 396, and also 994.

(*c*) *Ib.* 1143.

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exercised, shall operate in exercise of the same power, unless and until that person, or some or one of his issue, shall have become entitled for such an estate for life in possession as aforesaid; AND SO AS THAT no greater sum than £ in the whole shall ultimately become a charge on the hereditaments capable of being charged under any exercise or exercises of this power; And that if by successive exercises of this power a greater sum than £ would but for this proviso be charged for portions, the deed or deeds, will, codicil or codicils whereby such charge in excess of £ would but for this proviso be created, shall to the extent to which the excessive charge would be created fail; And that for the purpose of ascertaining what money shall have been effectually charged by instruments purporting to exercise this power the sums charged or purporting to be charged in exercise of this power shall have preference among themselves according to the priority in order of limitation of the estates of the persons by whom the same shall respectively be or purport to be charged; PROVIDED ALSO, and it is hereby further agreed and declared, that when any person or persons shall have erected or built any messuage or messuages or other buildings upon, or shall otherwise have improved any piece or parcel of ground, pieces or parcels of ground, part or parts of the said manors or lordships and other hereditaments hereinbefore appointed, granted and released as aforesaid, by way of encroachment or otherwise, it shall be lawful for the person or persons in whom the powers of leasing settled land hereby settled which are created by the Settled Land Act 1882 (*c*) shall for the time being be vested, if he or they shall think proper so to do, by way of compromise of rights or otherwise, to demise or lease the same piece or parcel of ground, messuage or messuages and other buildings (if any) thereon, either with or without any additional ground as and for a yard, garden and other conveniences to the same, unto such person or persons, his or their respective executors, administrators and assigns, for

Restriction on amount of charge (*a*).

Power to tenants for life to lease encroachments (*b*).

(*a*) Treatise, 1145.

(*b*) A power of this kind, framed with reference to the law as it stood before the commencement of the Settled Land Act 1882, was contained in the settlement on which this precedent is based. The power is not a usual one, and applicable, if at all, only in cases where encroachments are being made or are likely to be made. Possibly even in such cases the power may be superfluous, but none of the powers contained in the S. L. A. seem to be quite adapted to the purpose contemplated; and the power having been regarded as worth insertion by conveyancers of eminence, I have printed it with the requisite modifications for consideration and, possibly, use in cases circumstanced as the power implies the settled property to be.

(*c*) Treatise, 671.

such term or terms of years not exceeding ninety-nine years in possession and not in reversion, and at such rent, either nominal or substantial (but without any fine), as the person or persons for the time being entitled to exercise powers of leasing created by the Settled Land Act 1882 (*a*) shall under the circumstances think proper; PROVIDED ALWAYS, and it is hereby agreed and declared, that any money which shall be capital money (*c*) arising under the Settled Land Act 1882, and shall have been received for the trusts and purposes of the settlement hereby made, or shall otherwise have become subject to a trust for investment in the purchase of land to be settled to the subsisting uses of that settlement, may not only be invested or applied in the manner in the said Act mentioned, but also, if the trustees of this settlement for the time being shall think fit, and with their consent in writing, may be invested in the purchase of any capital or other messuage or mansion situate in or near London as a town residence; And also any capital messuage or mansion-house with a park and other grounds as a country residence for the said W. Earl of *X*, or other the person or persons for the time being so seised or entitled as aforesaid, such respective purchases being made either subject or without being subject to any special conditions of sale or contract restrictive of the rights of the purchasers in relation to the title or evidence of title to the purchased hereditaments, AND THAT the hereditaments so to be purchased be settled, conveyed, surrendered and assured to such uses, upon such trusts and with and subject to such powers, provisoes, agreements and declarations as under these presents or by reason of the exercise of any power of charging herein contained shall be then subsisting with respect to the settled land, if there shall then be any subject to the settlement hereby made, or if there shall be no such land then as would so as last aforesaid be then subsisting, with respect to such settled land as last aforesaid if there were then any, or as near thereto as the deaths of parties and other contingencies or the circumstances of the case will then permit, but not so as to increase or multiply charges or powers of charging (*d*); PROVIDED ALWAYS, nevertheless, and it is hereby further agreed

Power to buy with capital money a town or country mansion (*b*).

Power to pull down mansion (*e*),

(*a*) Treatise, 671.

(*b*) This power, derived from the same source as the preceding one, is printed for like reasons.

(*c*) *Ib.* 664, 687.

(*d*) *Ib.* 1304.

(*e*) This power also is, of course, only occasionally needed.

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and declared, that it shall be lawful for the trustees of this settlement, at any time or times after the solemnisation of the said intended marriage, at the request in writing of the said W. Earl of *X* during his life, and after his death then at the request in writing of the said W. W. Viscount *Y*, or of the other person who by virtue of the limitations hereinbefore contained shall for the time being be entitled for life in possession, as distinguished from remainder, to the hereditaments next hereinafter referred to, if that person shall be of full age, but if not, then at the request in writing of the guardian or guardians for the time being of such person as last aforesaid during his or her minority, To PULL DOWN the said capital messuage or mansion-house situate at in the county of , or any other of the capital or other messuages and buildings which shall be standing upon any part of the lands and messuages in the said county of , for the time being subject to the limitations hereof without rebuilding the same, and to sell and dispose of the materials of the building or buildings which shall be so pulled down or which for the time being shall be proposed to be pulled down, or otherwise to employ such materials or any of them in or about the erecting buildings, completing or improving of any such new capital messuage or mansion-house and buildings as hereinafter mentioned; And either to apply and dispose of the clear money to arise from such last-mentioned sale or sales after the payment and discharge of all costs, charges and expenses of or incidental to such sale or the execution of this present power, upon and for such and the same trusts and purposes and with the same powers (*a*) as the money arising from the sale under the powers conferred by the Settled Land Act 1882 of the site of such capital or other messuage and buildings, in case the same were sold under the same powers, would be subject or applicable to, or otherwise at such request as aforesaid to lay out and expend all or any of the money which shall have arisen or been produced by the exercise of the power last hereinbefore contained, or any other money which from time to time shall have arisen from the exercise of all or any of the powers of sale, exchange and partition and enfranchisement created by the Settled Land Act 1882 over any hereditaments which shall have been subject to the same limitations as the hereditaments to be built upon or improved as next

and to build another mansion.

(*a*) Treatise, 687—694.

hereinafter mentioned in the erecting and building of any other capital messuage or mansion-house upon any part of the lands and hereditaments for the time being subject to the limitations of these presents, or in or about the completing or improving of any capital messuage or mansion-house or family residence which for the time being shall or may be standing on any part of the last-mentioned lands and hereditaments, but so nevertheless that no greater sum in the whole than the sum of £ shall be so laid out and expended under this present provision for the purposes of such erection or improvement as aforesaid; PROVIDED ALWAYS, and it is hereby agreed and declared, that these presents and the said hereinbefore in part recited indenture of the day of May last shall not, nor shall anything herein or therein contained, in any manner suspend or destroy or prejudice the powers of leasing, selling and exchanging and appointing new trustees and other powers of the like kind, which by the hereinbefore-mentioned indenture of release and settlement of the day of , 1786, and the said Act of Parliament of the 53rd Geo. III. respectively, were given or reserved to the said W. Earl of *X*, or rendered or made capable of exercise with his consent (as tenant for life in the actual possession or receipt of the rents and profits of the said settled hereditaments) so far as regards such of the said manors and other hereditaments hereinbefore expressed to be appointed, granted and conveyed, situate and arising in the county of , as were comprised in or were affected by the limitations and provisions of the said indenture of the day of , 1828, but that such powers shall, so far as regards the same manors and other hereditaments, remain capable of exercise by or with the consent of the said W. Earl of *X* in such and the same manner in all respects as if these presents and the said indenture of the day of May last had not been executed, or as near thereto as may be, yet nevertheless that the manors and other hereditaments which shall be purchased with any money arising from the exercise of the said power of sale or exchange, or which shall be received in exchange under the exercise of the same power, shall be settled and assured to, for and upon such and the same uses, trusts, intents and purposes, and with and subject to such and the same powers, provisoes, agreements and declarations as the manors or lordships and other hereditaments by the sale or

Saving of powers in previous settlements (*a*).

(*a*) See Treatise, 1507.

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exchange whereof that money may have arisen or those hereditaments may have been acquired shall have stood limited or subject to immediately before such sale or exchange as last aforesaid under or by virtue of the conjoint operation of the said indenture of release and settlement of the day of 1786, the said indenture of settlement of the day of 1828, the said indenture of the day of May last, and these presents or any of them, or of any derivative or other appointments, conveyances, charges or assurances which have been or which shall or may have been made, executed or created under the powers in the same indentures or any of them or in these presents respectively contained, or as near thereto as the deaths of the parties and other circumstances will admit, and so also that in the meantime and until the money arising from the exercise of the same power of sale and exchange shall be invested in the purchase of any such manors or other hereditaments as aforesaid, the interest, dividends and annual proceeds arising from the stocks, funds or securities in or upon which that money shall or may be invested under or in pursuance of the last-mentioned power shall from time to time go and be paid to such person or persons and be applied to such uses, intents and purposes and in such manner as the rents and profits of the hereditaments to be purchased therewith would go and be payable or applicable to in case such purchase or purchases were actually made according to the direction or provision last hereinbefore contained; AND THIS INDENTURE FURTHER WITNESSETH that in order to perform or secure the performance of as well the covenant for the assurance of copyhold or customary tenements in the hereinbefore-recited indenture of the day of May last as aforesaid, as the said agreement for settlement so far as the same relates to copyhold or customary tenements hereinbefore contained and for the considerations hereinbefore mentioned, the said W. Earl of *X* and W. W. Viscount *Y* do and each of them doth hereby covenant with the said *A* and *B* that the said W. Earl of *X* and W. W. Viscount *Y* or such one if either of them as may have power so to do, and every other necessary party, at the costs and charges of the said W. Earl of *X* and W. W. Viscount *Y*, will and shall forthwith surrender into the hands of the lord or lady or lords or ladies respectively of the manors of which the copyhold or customary tenements hereinafter mentioned are holden respectively, according to the customs of the same manors

Appointment of copyholds.

respectively; ALL THAT, etc, and also all other (if any) the copyhold or customary lands and hereditaments which by the said hereinbefore in part recited indenture of the day of May last were so covenanted and agreed to be settled as aforesaid, To the use of the said *C* and *D*, their heirs and assigns, for ever, according to the customs of the said manors respectively, and subject to the payment and performance of the rents, fines, heriots, suits and services therefor respectively due and of right accustomed, but nevertheless UPON THE TRUSTS and with and subject to the powers, provisoes, declarations and agreements hereinafter expressed and contained or referred to of and concerning the same, (that is to say) until the said intended marriage shall be had and solemnised, Upon and for such and the same trusts, intents and purposes, and with and subject to such and the same powers, provisoes, declarations and limitations as the same copyhold or customary tenements and hereditaments immediately before the execution of these presents were or stood limited or subject to; AND from and after the solemnisation of the said intended marriage, upon such trusts, and with and subject to such powers, provisoes, agreements and declarations as will most nearly correspond with the uses, powers, provisoes, agreements and declarations hereinbefore expressed, declared and contained of and concerning the said manor or lordship of L , and other the manors or lordships and other freehold hereditaments hereby appointed and conveyed or expressed or intended so to be (other than and except the said manors and lordships and other hereditaments in the said county of), or as near thereto as the nature of the said copyhold or customary hereditaments and premises and the customs of the manor or manors whereof the same may be respectively holden will permit; AND the said W. Earl of *X* and W. W. Viscount *Y*, in exercise of the power given to them by the hereinbefore-recited indenture, do hereby appoint, and they do and each of them doth hereby declare, that until all the said copyhold or customary hereditaments so covenanted to be surrendered as aforesaid shall be surrendered accordingly, the said W. Earl of *X* and W. W. Viscount *Y* or either of them, and their or his customary heirs, or any other person or persons in whom the same hereditaments may be legally vested and

Parcels.

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Till marriage upon subsisting trusts.

Afterwards on trusts corresponding with those of freeholds other than those in county of (*a*).

Appointment of copyholds.

(*a*) As to trusts by reference generally, see Treatise, 1301; and of copyholds, *ib.* 1306.

PRECEDENT IV

the customary heirs of every such person or all such persons, shall stand possessed of the same hereditaments, Upon trust to surrender them to the trustees of this settlement to be held upon the trusts and with and subject to the powers hereinbefore expressed concerning the same; AND THIS INDENTURE FURTHER WITNESSETH that in pursuance of the said agreement in this behalf, and for the considerations hereinbefore mentioned, and for settling the said sum of £ Consolidated £3 per cent. Annuities, the said W. Earl of *X* and W. W. Viscount *Y*, in exercise of the said power or authority given or reserved to them both in and by the hereinbefore in part recited indenture of the day of May last, and of every other authority, right or interest them or either of them in any wise enabling in this behalf as beneficial owners, DO, and each of them as beneficial owner DOTH, direct, limit and appoint, and also mutually covenant and declare, that in case the said intended marriage shall be had and solemnised the said hereinbefore-mentioned sum of £1500 Consolidated £3 per centum Annuities so standing in the name of the said Edward R—— as aforesaid shall with all convenient speed after the solemnisation of the said intended marriage be transferred into the names of the said *C* and *D*, or other the trustees of this settlement for the time being, upon and for such and the same trusts, intents and purposes, and with, under and subject to such and the same powers, provisoes, agreements and declarations in all respects as the same would be held upon or subject to in case the same consisted of money and the investments of money which had arisen subsequently to the execution of these presents and the solemnisation of the said intended marriage from the sale of any freehold manors or lordships and other hereditaments hereinbefore expressed or intended to be hereby appointed, granted and conveyed (and not situated in the said county of), in exercise of the power of sale contained in the Settled Land Act 1882 (*b*), or as near thereto as may be (*Powers to trustees to accept less than marketable titles, to release securities, to employ agents, to allow professional trustees' charges; Extension of meaning of term "the trustees of this settlement,"* above, pp. 20—22); AND IT IS HEREBY DECLARED that the power of

Appointment of consols (*a*).

Sum of £1,500 Annuities.

Nomination of persons to

(*a*) As to settlement of personalty by a trust for investment in purchase of land, see Treatise, 1329.

(*b*) This power is stated in Treatise, 667; the directions for the investment of the price of land sold under it, at p. 687; and the beneficial interests in that price and the investments of it, at p. 692.

appointing new trustees of these presents created by the Conveyancing and Law of Property Act 1881 may from time to time be exercised by the persons hereinafter for that purpose mentioned, (that is to say) if and so often as the persons or person proposed to be appointed as new trustees or as a new trustee shall be intended to be so appointed in immediate or mediate succession to the said *A* and *B* or either of them, the last-mentioned power may be exercised by the said W. Earl of *X* and W. W. Viscount *Y* during their joint lives, and by the survivor of them during his life, and after the death of such survivor by the then continuing trustees or trustee of this settlement, and if there shall not be any such continuing trustee as aforesaid then by the refusing or retiring trustees or trustee of this settlement, if any, and if able and willing to exercise this power, or otherwise by the acting executors or executor, administrators or administrator of the trustee of this settlement who alone continuing to be such until his death shall have then last previously died, BUT if and so often as the persons or person proposed to be appointed as new trustees or as a new trustee shall be intended to be appointed in immediate or mediate succession to the said *K* and *L* or either of them, then the last-mentioned power may be exercised by the said W. W. Viscount *Y* and Lady A *Z* during their joint lives, and by the survivor of them during his or her life, and after the death of such survivor by the then continuing trustees or trustee of these presents for the purposes for which the said *K* and *L* are hereby appointed, and if there shall not be any such continuing trustee as last aforesaid then by the refusing or retiring trustees or trustee, being trustees or trustee for such purposes as last aforesaid, if any, and if able and willing to exercise this power, or otherwise by the acting executors or executor, administrators or administrator of the trustee for such purposes as last aforesaid who alone continuing to be such until his death shall have then last previously died; PROVIDED ALSO, and it is also agreed and declared, that the covenants by the said W. Earl of *X* for his right to convey, for the quiet enjoyment and freedom from incumbrances, and for the further assurance of the premises, herein implied by virtue of the Conveyancing and Law of Property Act 1881, shall not operate

appoint new trustees (*a*).

Restriction on implied covenants for title (*b*).

(*a*) As to appointment of trustees under powers, see Treatise, 1357—1382; and with reference to the case of there being different sets of trustees, *ib.* 1372.

(*b*) The statutory provisions authorising the implication of covenants for title are printed in Treatise 321—324. As to the qualification here made, see same, p. 324.

PRECEDENT IV. to bind the said W. Earl of *X*, his heirs, executors and administrators, with respect to any other estate in the premises than an estate during the life of the said W. Earl of *X*, AND THAT the covenants by the said W. W. Viscount *Y* for his right to convey, for the quiet enjoyment and freedom from incumbrances and for the further assurance of the premises, shall not operate to bind the said W. W. Viscount *Y*, his heirs, executors or administrators, in respect of any estate in the premises other than an estate in fee simple in remainder expectant on the death of the said W. Earl of *X*; IN WITNESS, etc.

V.

VOLUNTARY (*a*) STRICT SETTLEMENT *of Manors and other Hereditaments in favour of the* SETTLOR *and all his Issue*—LIVING CHILDREN *taking* LIFE ESTATES, *and Remainders to Females successively in Tail Male and in Tail* (*b*).—*Power of Revocation.*

THIS INDENTURE, made the day of 1885, BETWEEN [*settlor*] of the one part and [*trustees*] (who are hereinafter etc., p. 1) of the other part: WHEREAS the [*settlor*] being entitled for an estate of inheritance in fee simple in possession to the manors and hereditaments hereinafter described and expressed to be hereby granted is desirous of settling the same manors and hereditaments to the uses and in the manner hereinafter appearing; NOW THIS INDENTURE WITNESSETH that in order to effectuate his said desire, and in consideration of the natural love and affection which the said [*settlor*] bears to his sons and daughters hereinafter mentioned and of other good causes and considerations him hereunto moving, the said [*settlor*] doth hereby as settlor (*d*) grant and convey unto the said [*trustees*] and their heirs, ALL THOSE, etc. TO HAVE AND TO HOLD the said manors, messuages, farms, land and hereditaments and all other the premises expressed or intended to be hereby granted and conveyed unto the said [*trustees*] and their heirs, TO THE USE of the said [*settlor*] and his assigns during his life without impeachment of waste (*e*); And from and after the death of the said [*settlor*] TO THE USE of *A*, the eldest son of the said [*settlor*], during the life of the said *A* without impeachment of waste, with remainder TO THE USE of the first and other sons of the said *A* successively according to seniority in tail male (*f*), with remainder TO THE USE of *B*, the second son of the said [*settlor*], during the life of the said *B* without

Parties (*c*).

Recital (*c*) of desire to settle.

Grant.

Parcels. To hold.

Uses.

(*a*) Treatise, 66.
(*b*) As to limitations to issue in settlements of land, and the order of their insertion, see *ib.* 1169.
(*c*) As to "parties" and "recitals," *ib.* 278—284.
(*d*) *Ib.* 323, 324.
(*e*) "Without impeachment of waste," *ib.* 896. (*f*) *Ib.* 1182.

PRECEDENT V. impeachment of waste, with remainder TO THE USE of the first and other sons of the said *B* successively according to seniority in tail male, with remainder TO THE USE of the sons of the said [*settlor*] hereafter to be born successively according to seniority in tail male, with remainder TO THE USE of Mary the eldest daughter of the said [*settlor*] during her life without impeachment of waste, with remainder TO THE USE of the first and other sons of the said Mary successively according to seniority in tail male, with remainder TO THE USE of Evelyn the second daughter of the said [*settlor*] during her life without impeachment of waste, with remainder TO THE USE of the first and and other sons of the said Evelyn successively according to seniority in tail male, with remainder TO THE USE of the daughters of the said [*settlor*] hereafter to be born successively according to seniority in tail male, with remainder TO THE USE of the first and other sons of the said *A* successively according to seniority in tail, with remainder TO THE USE of the first and other daughters of the said *A* successively according to seniority in tail, with remainder TO THE USE of the first and other sons of the said *B* successively according to seniority in tail, with remainder TO THE USE of the first and other daughters of the said *B* successively according to seniority in tail, with remainder TO THE USE of the sons of the [*settlor*] hereafter to be born successively according to seniority in tail, with remainder TO THE USE of the first and other sons of the said Mary successively according to seniority in tail, with remainder TO THE USE of the first and other daughters of the said Mary successively according to seniority in tail, with remainder TO THE USE of the first and other sons of the said Evelyn successively according to seniority in tail, with remainder TO THE USE of the first and other daughters of the said Evelyn successively according to seniority in tail, with remainder TO THE USE of the daughters of the [*settlor*] hereafter to be born successively according to seniority in tail, with remainder TO THE USE of *C*, the sister of the [*settlor*] her heirs and assigns for ever (*a*); [*Add direction as to accumulation of rents during minorities, p.* 5, *and trustee clauses, pp.* 20—23]; PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be

Power of revocation (*b*).

(*a*) Add here such, if any, enlargements of the powers conferred by the Settled Land Act on the tenant for life, or additional administrative powers as may be desired. Either provisions or powers to make provisions for widows, surviving husbands, and younger children would ordinarily be needed in such a settlement as this, and possibly a Name and Arms Clause.

(*b*) As to powers of revocation, see Treatise, 1434.

lawful for the said [*settlor*], at any time or times, by any deed or deeds, but without derogation from the effect of any previous exercise of any power vested in him as tenant for life of the settled land by virtue of the settlement hereinbefore expressed to be hereby made, to revoke or vary all or any of the uses hereinbefore limited concerning the said manors and hereditaments hereinbefore expressed to be hereby granted, or any of them, or any part or parts thereof; And by the same or any other deed or deeds to declare any new or other uses, trusts or powers concerning the hereditaments, the uses whereof respectively shall have been so revoked or varied as aforesaid; IN WITNESS, etc. PRECEDENT V.

VI.

MARRIAGE SETTLEMENT *limiting the Freehold* ESTATES *of the intended* HUSBAND *and* WIFE *respectively to the Use of them successively for* LIFE, *with Remainder (subject to a Power to the Husband and Wife, and the Survivor, to* APPOINT *to or in Trust for any* CHILD, CHILDREN, *or other* ISSUE), *to the* CHILDREN EQUALLY *in* TAIL; *with Cross Remainders* (*a*); *Ultimate* LIMITATIONS *to the* RESPECTIVE SETTLORS.

Parties (*b*).

THIS INDENTURE, made the day of , BETWEEN [*intended husband*], of etc., of the first part; [*intended wife*], of etc., spinster, of the second part; and *A* of etc., and *B* of etc., who, etc. (above, p. 1), of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS the said [*intended husband*] is seised or entitled in fee-simple of or to the hereditaments, hereinafter expressed to be hereby granted by him; And the said [*intended wife*] is seised or entitled in fee-simple of or to the hereditaments hereinafter expressed to be hereby granted by her; AND WHEREAS, upon the treaty for the said intended marriage, the said [*intended husband*] and [*intended wife*] respectively agreed to convey, settle, and assure the said several hereditaments, whereof or whereto they are so respectively seised or entitled as aforesaid, To the several uses, upon and for the several trusts, intents, and purposes, and with and subject to the several powers, provisoes, agreements and declarations hereinafter expressed concerning the same respectively; NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, so far as the same relates to the estates of the said [*intended husband*], and in consideration of the said intended marriage, the said [*intended husband*], with the privity of the said [*in-*

Recitals (*b*) of the intended marriage:—

That intended husband is seised of lands in fee;

That intended wife is also seised of lands in fee;

Agreement for settling the same respectively.

The intended husband conveys his lands to trustees.

(*a*) As to this mode of settling land, see Treatise, 1169; and as to powers to appoint land to issue, *ib.* 1080.

(*b*) As to "parties" and "recitals," *ib.* 278—284.

tended wife], DOTH by these presents, as beneficial owner (*a*), grant and convey unto the said [*trustees*] and their heirs, ALL THAT (*parcels*), TO HAVE AND TO HOLD the said , and all other the hereditaments expressed or intended to be hereby granted by the said [*intended husband*] unto the said [*trustees*] and their heirs, TO THE USE of the said [*intended husband*] and his heirs, until the said intended marriage shall be solemnised; And immediately after the solemnisation thereof, to the uses, and upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same; AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the said agreement, and so far as the same relates to the estates of the said [*intended wife*], and in consideration of the said intended marriage, the said [*intended wife*], with the privity of the said [*intended husband*], DOTH by these presents, as beneficial owner (*a*), grant and convey unto the said [*trustees*], and to their heirs, ALL THAT (*parcels*); TO HAVE AND TO HOLD the said , and all other the hereditaments expressed or intended to be hereby granted by the said [*intended wife*] unto the said [*trustees*] and their heirs, TO THE USE of the said [*intended wife*] and her heirs, until the said intended marriage shall be solemnised; and immediately after the solemnisation thereof, to the uses, and upon the trusts, and subject to the several powers, provisoes, agreements and declarations hereinafter expressed concerning the same, (that is to say) AS TO ALL and singular the aforesaid and premises, as well those granted by the said [*intended husband*], as those granted by the said [*intended wife*], from and immediately after the solemnisation of the said intended marriage, TO THE USE of the said [*intended husband*] and his assigns, for his life, without impeachment of waste (*b*); And from and after the determination of that estate, TO THE USE of the said [*intended wife*] during her life, without impeachment of waste, for her jointure, and in bar of all dower and freebench which she might otherwise claim; And immediately after the death of the survivor of them the said [*intended husband*] and [*intended wife*], TO THE USE of all and every such one or more of the children or more remote issue of the said [*intended husband*] by the said [*intended wife*], or to the use of any other person or persons whomsoever, IN TRUST for such child, children, or issue, or any of them, either

PRECEDENT VI.

To hold

To the use of the intended husband till the marriage, afterwards to the uses after limited.

Intended wife conveys her lands to trustees.

To hold

To the use of herself and her heirs till the marriage, and then to the uses after mentioned;

As to all the premises after the marriage;

To the use of intended husband for life.

Remainder to intended wife for life.

Remainder to such issue of the marriage as husband and wife shall appoint (*c*);

(*a*) Treatise, 321, 324. (*b*) *Ib.* 896. (*c*) *Ib.* 1080, 1196, 1206.

PRECEDENT VI.

exclusively or in such parts, shares or proportions, and for such estate or estates, interest or interests, with such limitations or remainders over, and charged and chargeable with the payment of such yearly sum or sums of money (such limitations or remainders over and charges, nevertheless, to be for the benefit of some or one of such children or issue), and in such manner and form (without transgressing the law against perpetuities) as the said [*intended husband*] and [*intended wife*], by any deed or deeds, writing or writings, with or without power of revocation, to be by them sealed and delivered, shall from time to time during their joint lives, or as the survivor of them shall from time to time, after the death of the other of them, by any deed or deeds, with or without power of revocation, or by his or her last will and testament in writing, or any codicil or codicils thereto, appoint; And in default of and subject to any and every such appointment, TO THE USE of all and every the child and children of the said [*intended husband*] by the said [*intended wife*], equally to be divided between them if more than one, as tenants in common, and of the heirs of the body and respective bodies of such child or respective children lawfully issuing; AND in case there shall be a failure of issue of the body or bodies of any of such children, then as to the share or shares (as well surviving or accruing as original) of such of them whose issue shall so fail, TO THE USE of the other child or children of the said [*intended husband*] by the said [*intended wife*], equally to be divided between them if more than one, as tenants in common, and of the heirs of the body and respective bodies of such other child or children lawfully issuing; AND, if all such children but one shall die without issue of his or her body, or there shall be originally but one such child, then TO THE USE of such one or only child, and the heirs of his or her body lawfully issuing; AND for default of such issue, THEN AS TO the said hereditaments hereinbefore expressed to be hereby granted by the said [*intended husband*], TO THE USE of the said [*intended husband*], his heirs and assigns, for ever, AND AS TO the said hereditaments hereinbefore expressed to be hereby granted by the said [*intended wife*], TO THE USE of the said [*intended wife*], her heirs and assigns for ever (*a*); [*Add clauses above, pp.* 20—23]. IN WITNESS, etc.

Remainder to all the children of the marriage as tenants in common in tail general, with cross remainders among them;

Remainder, as to the estates of the intended husband, to him in fee,

And as to the estates of the intended wife, to her use in fee.

(*a*) In the precedent upon which this is founded the ultimate remainder of the wife's estate was subjected to a general power of appointment given to her. Since the Married Women's Property Act came into operation such a power is not wanted. The point for consideration is whether the wife's estate should not be made inalienable during the coverture.

VII.

SETTLEMENT *of* LEASEHOLDS *for* LIVES *on* INTENDED HUSBAND *for Life, with Remainder to the* INTENDED WIFE *for Life, with Remainder to their respective* CHILDREN *by former Marriages.* COVENANT *by Husband during his Life to* RENEW *the* LEASE. *In case of his Default, and also after his Decease,* RENEWAL *to be made by* TRUSTEES. *Clause fixing* PROPORTIONS *of* CONTRIBUTION *towards Expenses of Renewal* (*a*).

THIS INDENTURE, made the day of , 18 , Parties (*b*).
BETWEEN [*intended husband*], of etc., of the first part; [*intended wife*], of etc., widow, of the second part; and [*trustees*], of etc., (who, etc. above, p. 1), of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and the said [*intended wife*]; AND WHEREAS, by an indenture bearing date the day of , Recital (*b*) of lease for lives.
, and expressed to be made between [*lessor*], of the one part, and [*lessee*], of , of the other part, the said [*lessor*] did demise unto the said [*intended wife*], her heirs and assigns, All that etc.; To hold the same unto the said [*intended wife*], her heirs and assigns, for the lives of *A* of etc., *B* of etc., and the said [*intended wife*], and the life of the longest liver of them, subject to the payment of the yearly rent of £ , thereby reserved, and to the performance of the covenants by the said [*intended wife*] therein contained; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said hereditaments demised by the herein-before-recited indenture should be settled in the manner herein-

(*a*) In limiting either by deed or will renewable leaseholds held for lives or years, to or in trust for one or more persons for life with ulterior trusts, several points require attention. First, to state explicitly whether it is intended to impose on the tenant for life, or the trustees, an obligation to renew the lease, if it should become renewable (*i.e.*, if an opportunity of renewal should occur), pending the life interest or trusts. Secondly, to provide out of what fund and in what manner the expenses of renewal are to be raised. And thirdly, in what proportions they are to be ultimately contributed by the persons beneficially interested.—9 Jarm. By. 347. See Treatise, ch. xv. s. 4, p. 1313. Points to be attended to in limiting renewable leaseholds.

(*b*) As to parties and recitals, see *ib.* 278—284.

PRECED. VII.

Grant.

after appearing: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage and of the covenant by the said [*intended husband*] hereinafter contained, the said [*intended wife*], as beneficial owner (*a*), and with the privity of the said [*intended husband*] (*b*), DOTH by these presents grant unto the said [*trustees*], their executors, administrators and assigns, ALL AND SINGULAR the

Parcels.

and hereditaments demised by the hereinbefore-recited indenture of lease or held by virtue thereof; TO HAVE AND TO HOLD the said

To hold

and premises hereby granted, or intended so to be, unto and to the use of the said [*trustees*], their executors, administrators or assigns (*c*), henceforth for and during the lives of the said [*three cestuis que vie*], and the lives and life of the survivors and survivor of them, and for all other the estate and interest of the said [*intended wife*] in the premises, by virtue of the hereinbefore-recited indenture of lease or otherwise, upon the trusts nevertheless, and for the purposes, hereinafter expressed concerning the same; that is to say, IN TRUST for the said [*intended wife*], her executors, administrators and assigns, until the solemnisation of the said intended marriage; and after the solemnisation thereof, UPON TRUST, from time to time, by and out of the rents and profits of the premises, to pay the rent and perform the covenants by and in the hereinbefore-recited indenture of lease and by and in every renewed lease thereof reserved and contained, and by the lessee to be paid and performed, and to pay the residue or surplus of the said rents and profits to the said [*intended husband*] or his assigns during his life; AND immediately after the death of the said [*intended husband*], THEN UPON TRUST to pay the said residue or surplus of the rents and profits of the premises to the said [*intended wife*] or her assigns during her life, and after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], UPON TRUST to convey and assure the premises unto and equally among [*name*], the only child of the said [*intended wife*], and [*names*] the two children of the said [*intended husband*], and their respective

In trust for wife until the marriage, and then in trust for the husband for life, with remainder to the wife for life;

And after the death of both, to their respective children by former marriages.

(*a*) Treatise, 321, 324. (*b*) *Ib.* 278, 1581.

(*c*) Leaseholds for lives may be limited indifferently, either to real or personal representatives. The latter has always been deemed the preferable mode of vesting such estates in trustees, as it prevented them from devolving to an infant heir (9 Jarm. By. 354); and now that all trust property, including such as is limited to the heir as special occupant, devolves to the personal representative of a deceased trustee (44 & 45 Vict. c. 41, s. 30), it would be absurd to limit it to the heir.

executors, administrators and assigns, in equal shares, as tenants in common (*a*); AND the said [*intended husband*] doth hereby covenant with the [*trustees*], that, in case the said intended marriage shall take effect, the said [*intended husband*] will from time to time, during his life, so often as and when any of the persons for whose lives the premises are holden shall die, and also so often as and when any of the persons who shall be named as the *cestuis que vie* in any new lease to be granted of the premises as hereinafter mentioned shall happen to die, and within the period of six calendar months next following the death of every such person, at the costs and charges of the said [*intended husband*], use his best endeavours to renew and obtain from the said [*lessor*], his heirs and assigns, or such other person or persons as for the time being shall be entitled to grant the same, either to himself the said [*intended husband*] or to the trustees or trustee of these presents for the time being, a new lease of the premises for three lives (whereof the life of the said [*intended wife*], whilst living, shall always be one), at and under the like yearly rent and covenants as in and by the said lease, by virtue of which the same premises are now held, are reserved and contained; SO AS that there may be a subsisting estate for three lives at least in the said leasehold premises at the time of the decease of the said [*intended husband*]; AND that the said [*intended husband*], his heirs, executors or administrators, will or shall, from time to time, immediately after every such renewal, in case the renewed lease to be obtained shall be granted to him or them, at his or their own costs and charges, well and effectually convey and assure the premises unto the said [*trustees*], their executors, administrators and assigns, for the lives of the persons for whose lives the same lease or leases shall be respectively granted, upon the trusts and for the intents and purposes hereinbefore expressed concerning the same, or such of them as shall be then subsisting or capable of taking effect; PROVIDED ALWAYS, and it is hereby agreed, that in case the said [*intended husband*], shall neglect to renew the present lease or any future lease to be granted of the premises as aforesaid, for the period of six calendar months next after the dropping of any such life as aforesaid, contrary to the covenant for that purpose hereinbefore contained, and also in case any of the lives for

PRECED. VII.

Covenants by the husband to renew leases, so as to keep up three lives.

Covenant by husband after the granting of every such new lease to convey to trustees.

Power for trustees to renew upon the neglect, and also after decease, of husband.

(*a*) Treatise, 76—80; below, p. 244.

PRECED. VII.

which such lease shall for the time being be holden shall happen to drop after the decease of the said [*intended husband*], and during the lifetime of the said [*intended wife*], then and in every such case, and so often as the same shall happen, it shall be lawful for the trustees or trustee for the time being of these presents, at their or his own discretion, to renew and take such new lease of the same premises in the manner hereinbefore mentioned; And that the said trustees or trustee shall and may, by and out of the rents and profits of the said premises, or by mortgage thereof, as they or he in their or his discretion shall think proper, levy and raise sufficient money to answer and defray the fines and all other charges incident to every such renewal, and apply the same accordingly;

Declaration that new leases shall be subject to the trusts.

AND IT IS HEREBY AGREED AND DECLARED that the said leasehold premises hereby granted, and every new lease of the same or any part thereof, upon any and every renewal to be obtained thereof as aforesaid, shall, from time to time and at all times, be subject to, and the said [*trustees*], their executors, administrators, or assigns, shall stand and be possessed of and interested in the premises, and the same shall be and remain, for and during the continuance of every such new lease respectively, upon the same trusts and for the same intents and purposes as are hereinbefore expressed concerning the premises, or such of them as shall be then subsisting or capable of taking effect;

Indemnity to mortgagees paying trust moneys.

PROVIDED ALWAYS, and it is hereby agreed and declared, that no mortgagee shall be obliged to inquire into the necessity, propriety, or occasion of any mortgage being made by the said trustees or trustee for the time being, by virtue of the power hereinbefore contained;

Power of mortgaging not to exonerate husband.

PROVIDED ALSO, and it is hereby further agreed and declared, that the power hereinbefore given to the trustees of these presents to raise by mortgage the charges and expenses of the renewals hereby directed to be made, shall not, in any degree, restrict or diminish the liability of the said [*intended husband*], his heirs, executors and administrators, under his covenant hereinbefore contained, to pay the said charges and expenses in ease and exoneration of the said premises, which shall or may happen to be charged therewith by virtue of the same power;

Proportions in which parties are to contribute towards renewal expenses.

PROVIDED ALSO, and it is hereby further agreed and declared, that in case any renewal or renewals shall take place after the decease of the said [*intended husband*], and during the life of the said [*intended wife*], by virtue of the

power in that behalf hereinbefore contained (*a*), then and in every such case the persons who shall be beneficially interested in or entitled to the premises under or by virtue of the ultimate trust hereinbefore contained, shall be liable to pay and bear the full amount of the charges and expenses incurred in every such renewal, with simple interest thereon, at the rate of £5 per cent. per annum, up to the time of the decease of the said [*intended wife*], subject, nevertheless, to a deduction thereout at the rate of £10 per cent. on the aggregate amount of principal and interest for each and every year which she shall have held and enjoyed the premises after the commencement of such renewed lease or leases respectively, and so in proportion for any less period than a year, rests being made at the end of each successive year, which deducted sum shall be the share or proportion to be borne by the said [*intended wife*] of the said charges or expenses of renewal in respect of her interest for life, under or by virtue of the trusts hereinbefore contained (*b*); PROVIDED NEVERTHELESS, and it is hereby declared, that this present clause shall not oblige the persons interested in the premises under the ultimate trusts hereinbefore contained to pay or contribute towards the expense of any renewal effected during the life of the said [*intended wife*], unless the additional life or one of the lives inserted in the renewed lease shall be in being at the time of the decease of the said [*intended wife*], nor unless her

(*a*) Sometimes it may be advisable to give to the trustees a discretionary power of fixing the proportions, and then the following should be substituted for the clause in the text :—

Power to trustees to fix the proportions of contribution to expenses of renewal.

"then and in every such case the trustees or trustee for the time being of these presents are and is hereby empowered and directed, in their or his absolute discretion, to declare and determine in what shares and proportions the charges and expenses of renewing the said lease shall be paid and borne by the person or persons who for the time being shall be interested in the premises under or by virtue of the trusts hereinbefore contained, and who shall participate in the benefit of such renewal or renewals respectively; and the determination of such trustees or trustee in the premises shall be binding and conclusive on all the persons claiming under or by virtue of the trusts herein contained."

Observations on the clause regulating the proportions.

(*b*) This is merely suggested as exhibiting a mode of ascertaining the proportions by a very simple arithmetical calculation. In fact, it is almost as easily applied as the old rule, which charged the tenant for life with one-third and the remainderman with two-thirds of the renewal fine (Treatise, 1317), and certainly has the merit of attaining a fairer result, though it does not adjust the proportions with the same exactness as the present rule of equity. Often,

PRECED. VII.

Direction to renew not to be compulsory if excessive fine is demanded.

decease shall happen within ten years after the commencement of the last-mentioned lease; PROVIDED ALSO, and it is hereby further declared and agreed, that, in case the said [*lessor*], his heirs or assigns, shall, at any time or times hereafter, refuse or decline to renew, on fair and reasonable terms, the lease by which the premises shall for the time being be holden, the said [*intended husband*] or the trustees for the time being of these presents shall not be bound or compellable, by virtue of the covenant and trusts hereinbefore contained, to accept a renewed lease from the said [*lessor*], his heirs or assigns; but no fine shall be deemed to be excessive or unreasonable unless the same shall exceed the sum paid for the last renewal of the lease of the premises with such an advance or increase thereon as shall be proportioned to the improved value of the premises; PROVIDED ALWAYS that no trustee of these presents shall be chargeable for a breach of trust on account of any omission or neglect to obtain any such renewed lease or grant as aforesaid; [*Add declaration that trustees shall be trustees for purposes of Settled Land Act* 1882 *and Conveyancing Act* 1881; *extension of meaning of Trustees of this Settlement; and nomination of persons to appoint new trustees*, pp. 20—23]; IN WITNESS, etc.

however, it is of more importance to the parties, especially in small transactions, that some certain standard should be supplied, than that more equal justice should be attained by a more costly and elaborate process.—9 Jarm. By. 358.

VIII.

VOLUNTARY SETTLEMENT *by a Peeress of her* DIAMONDS *to accompany the Title* (*a*).

THIS INDENTURE, made the day of , BETWEEN The Right Hon. *Ann* Countess *A*, wife of The Right Hon. *Thomas* Earl *A*, Knight of the Most Noble Order of the Garter, of the one part, and *A B* of , of the other part; Parties (*b*).

WHEREAS the said Countess *A* is desirous of settling the diamonds, pearls and things described in the schedule hereto in the manner hereinafter appearing, and has already delivered or intends to deliver the said diamonds, pearls and things to Mary commonly called Lady *B*, wife of *C D*, Esq., commonly called Lord *B*, it being intended that the said Lady *B* shall under the trusts herein contained be the first person entitled to the enjoyment of the said diamonds, pearls and things,—NOW THIS INDENTURE WITNESSETH that, in order to effectuate the said desire, the said Countess *A* as settlor (*c*) doth hereby assign unto the said *A B* ALL AND SINGULAR the diamonds, pearls and things particularly described in the said schedule hereto, with the settings and appendages thereof, TO HOLD the same unto the said *A B*, his executors, administrators and assigns, UPON THE TRUSTS, with the powers and subject to the declarations hereinafter contained (that is to say) IN TRUST for the said Lady *B* during her life; and after her death IN TRUST for George *D* the eldest son of the said Lord and Lady *B* during his life; and after the death of the said George *D* UPON TRUST, successively and for the interests respectively hereinafter mentioned, for the several persons who may, after the death of the survivor of them the said Lady *B* and George *D*, successively be or become entitled to the title and dignity of Earl *A*, except such of those persons as may become entitled to the said title and dignity after the said diamonds and other the premises shall under the trusts herein

Recital (*b*) of desire to settle.

Assignment.

To hold.

Trusts for Lady *B* for life,

—for her son for life,

—for Earls *A* successively.

(*a*) As to voluntary settlements, see Treatise, 89—109; as to settlements of chattels, *ib.* 297; so as to accompany a descendible title of honour, *ib.* 1335.

(*b*) As to parties and recitals, see *ib.* 278—284.

(*c*) *Ib.* 323, 324.

PRECED. VIII.

Definitions of interests of Earls successively.

contained have vested absolutely in some then preceding Earl *A*; And it is hereby declared that the interest in the premises of every of the said Earls *A* who shall be entitled under this trust, and who is either now living or though not yet living shall die before the expiration of twenty-one years next after the death of the survivor of the said Earl *A*, the said Countess *A*, the said Lord and Lady *B*, and all other the children, grandchildren and great-grandchildren now living of the said Countess *A*, shall be for and during only such part of his life as shall be subsequent to the time at which he shall become entitled to the said title and dignity, and as he shall have a wife living; And that the interest in the premises of such one of the said Earls *A* who shall be entitled under this trust as shall be the first of those who are not now living and shall not die until after the expiration of twenty-one years next after the death of the survivor of the said Earl *A*, the said Countess *A*, the said Lord and Lady *B*, and all other the children, grandchildren and great-grandchildren now living of the said Countess *A*, shall be an absolute interest; And that if at the death of the last Earl *A* who shall under the trusts herein contained be entitled to a limited interest in the said diamonds and other the premises, there shall not be an Earl *A* in whom under the trusts herein contained they shall vest absolutely, then and thenceforth the said *A B*, his executors, administrators or assigns, shall stand and be possessed of and interested in the said diamonds and other the premises, IN TRUST for the person who shall then answer the description of heir general of the said Countess *A*; And it is hereby also declared that if at any time or times before any person shall have become absolutely entitled under these presents to the said diamonds and other the premises, the person who if he had a wife would for the time being be entitled under these presents to a limited interest therein, shall not have a wife, then and in every such case, and so long as it shall exist, the said *A B* shall take and may retain possession of the said diamonds and other the premises; But he may during any or every such time as last aforesaid, or any part or parts thereof, deliver the said diamonds and other the premises to and permit them to remain for safe custody in the possession of any banker or bankers or banking company; And in every such case as last aforesaid and so long as it shall exist it shall be lawful for but not incumbent on the said *A B* to deliver the said diamonds and other the premises to and permit

Ultimate contingent trust for heir of Countess.

Trustee may take possession while no one entitled to enjoyment,

—may deposit with banker,

—may permit enjoyment by other descendants of Countess.

them to be retained by any daughter, granddaughter, great-granddaughter or wife of any grandson of the said Countess *A* to whom the said *A B* shall think fit to deliver them, and to permit the same daughter, granddaughter, great-granddaughter or wife of any grandson to retain the said diamonds and other the premises during the whole or any part or parts of the time during which the person who if he had a wife would for the time being be entitled to the possession of the said diamonds and other the premises, shall not have a wife; And it is hereby also agreed and declared that so soon as conveniently may be after delivery of the said diamonds and other the premises to the said Lady *B* and the execution of the presents, a memorandum shall be signed by the said Lady *B* acknowledging the receipt of the said diamonds and other the premises; And that a similar memorandum shall from time to time be signed by every person who shall become by virtue of these presents entitled to or shall be allowed to have the enjoyment of and shall receive the same diamonds, and other the premises; And that every such memorandum as last aforesaid shall also be signed by the trustee or trustees of these presents for the time being; And that neither the said *A B* nor any future trustee of these presents shall be answerable or accountable for the said diamonds and other the premises or any of them being lost or stolen or destroyed or damaged by fire or other accident, or for any other matter or thing relating thereto, unless the same loss, theft, destruction, accident, matter or thing shall happen through his own wilful act or neglect respectively; And it is hereby also agreed and declared that the said diamonds and other the premises, or any of them, may from time to time be altered or changed for other diamonds, pearls or other precious stones or jewels, settings and appendages, at the pleasure and expense of the said Lady *B* during her life, or of any person who may hereafter become entitled to the enjoyment of the said diamonds, and other the premises, under the trust herein contained during the time during which he shall be so entitled to the said enjoyment, provided that the intrinsic value of the diamonds, and other the premises subject to the trusts of these presents be not thereby diminished; And that all diamonds, pearls, precious stones, jewels, settings and appendages which shall be acquired under any exercise of this

PRECED. VIII.

Receipt to be given by every person having custody.

Exoneration of trustees from liability (*a*).

Power to exchange (*b*) and alter setting.

(*a*) Treatise, 1354, 1429. (*b*) As to sale of heirlooms, *ib.* 705.

PRECED. VIII.

power shall until they shall be again parted with under a subsequent exercise of this power be held upon the trusts and with and subject to the powers hereby made applicable to the said diamonds and other the premises hereby assigned, and that every direction and declaration herein contained with reference to the diamonds and other the premises hereby assigned shall during any such period as last aforesaid apply to the diamonds, pearls, precious stones, jewels, settings and appendages for the time being subject to the trusts hereby declared; And it is hereby last agreed and declared that it shall be lawful for the said Countess *A* from time to time and at any time or times by deed to vary or revoke all or any part of the trusts and powers hereinbefore declared and created [Add *Nomination of persons to appoint new trustees;* above, p. 22]; IN WITNESS, ETC.

Power of revocation (*a*).

The Schedule above referred to.

FORMS ENLARGING POWERS CONFERRED BY THE SETTLED LAND ACT 1882 (*b*).

Statutory restriction of powers of sale, etc., in respect of mansion, etc., confined to specified hereditaments (*c*).

AND IT IS HEREBY AGREED AND DECLARED that all the land hereby settled (except (*d*) the principal mansion-house and land usually occupied therewith which are particularly described in the Schedule hereunder written or hereunto annexed) may notwithstanding the provisions contained in the fifteenth section of the Settled Land Act 1882 be sold or leased by the tenant for life within the meaning of that Act under the provisions therein contained without the consent of the trustees of the settlement or an order of the Court.

Extension of power of exchange (*e*).

AND IT IS HEREBY AGREED AND DECLARED that any part or parts of the property which shall be subject to this settlement and shall be settled land within the meaning of that term in the Settled Land Act 1882 and shall be situate in England may in exercise of the power of exchange in the last-mentioned Act contained be given in exchange for land in .

(*a*) Treatise, 1434.
(*b*) See Settled Land Act 1882, s. 57; Treatise, 726.
(*c*) *Ib.* 681.
(*d*) Or, if that be the intent, instead of the exception: "including the principal mansion-house on the land hereby granted, and the demesnes thereof, and other lands usually occupied therewith."
(*e*) See Settled Land Act 1882, s. 4 (8); Treatise, 668.

Extension of statutory power of applying capital money (*a*).

AND IT IS HEREBY AGREED AND DECLARED that capital money arising under the Settled Land Act 1882 out of or in respect of any property which is or shall be subject to this settlement, or in respect of the exercise of any power over any such property as lastly aforesaid, subject to the payment of claims properly payable thereout and to the application thereof for any special authorised object for which the same shall have been raised, may when received be invested or otherwise applied wholly in one or partly in one and partly in another or others of the following modes (namely)—

Power to raise money by mortgage for a purpose not specified in S. L. A. (*b*).

AND IT IS HEREBY AGREED AND DECLARED that any tenant for life within the meaning of that term in the Settled Land Act 1882 of the property which shall for the time being be subject to this settlement and be settled land within the meaning of that term in the same Act, may for the purpose of purchasing a freehold or leasehold dwelling-house in , and any stables, coachhouses or other buildings to be occupied therewith, and with or without any land not exceeding acres adjacent or near thereto, raise any sum of money not exceeding £ on mortgage of the said settled land or any part thereof; And that for the purpose last aforesaid the said tenant for life shall have the same powers in all respects as he would have if the money to be raised in exercise of the authority last hereinbefore contained were required for one of the purposes for which a tenant for life is by the eighteenth section of the said Settled Land Act empowered to raise money on mortgage; PROVIDED ALWAYS that the power last hereinbefore contained may be exercised partly at one time and partly at another for the purpose of purchasing first any such messuage as aforesaid and subsequently any other messuage, buildings or land convenient to be occupied with the first purchased messuage, so as that not more than acres in the whole shall be purchased and not more than £ in the whole shall be raised by mortgage; PROVIDED ALSO that this power shall not otherwise than as aforesaid be exercised after the first exercise thereof; AND that no person lending money purporting to be borrowed in exercise of this power shall be bound to ascertain that the same is needed for the purpose for which it shall be alleged to be borrowed, or bound to see to the application thereof; AND that the money which

(*a*) See Settled Land Act 1882, ss. 21, 25; Treatise, 687—691, 694.
(*b*) See S. L. A. 1882, ss. 18, 47; Treatise, 684, 716.

FORMS.

shall be borrowed in exercise of this power may and shall be invested in the purchase of such a messuage, buildings or land and hereditaments as last aforesaid; AND that the same messuage, buildings, land or hereditaments, according to the quality of the estate or interest therein, shall be conveyed as if the same were hereditaments purchased with capital money arising under the Settled Land Act 1882 from the sale of settled land subject to this settlement; AND that subject to the directions hereinbefore contained all the money borrowed in exercise of this power shall be deemed to be such capital money as last aforesaid.

Power to lease for longer terms than S. L. A. authorises (*a*).

AND IT IS HEREBY AGREED AND DECLARED that with reference to all settled land at any time subject to the settlement hereby made the Settled Land Act 1882 shall be construed as if the sixth section thereof had declared that a tenant for life might lease the settled land or any part thereof, or any easement, right or privilege of any kind over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding, in case of a building lease years, in case of a mining lease years, in case of any other lease years.

Direction not to capitalise mining rents (*b*).

AND IT IS HEREBY AGREED AND DECLARED that under a mining lease of any mines or minerals subject to this settlement made in exercise of the power in this behalf in the Settled Land Act 1882 (*c*), whether the mines or minerals leased are already opened and in work or not, there shall not be from time to time set aside as capital money arising under the last-mentioned Act any part of the rent, notwithstanding the direction in that behalf in the eleventh section of that Act contained.

Declaration that tenant for life need not give notice of intent to exercise powers (*d*).

AND IT IS HEREBY AGREED that a tenant for life of the land hereby settled, when intending to make a sale, exchange, partition, lease, mortgage or charge in exercise of any of the powers conferred on him by the Settled Land Act 1882, shall not be bound to give notice of his intention in that behalf,

(*a*) See Settled Land Act 1882, s. 6; Treatise, 671. The insertion of this enlargement may relieve the tenant for life from the necessity of applying to the Court under s. 10; Treatise, 675.

(*b*) *Ib.* 676.

(*c*) If necessary add "as hereby extended."

(*d*) See Settled Land Act 1882, s. 45; *ib.* 1884, s. 5; Treatise, 710, 711.

notwithstanding the provisions in the forty-fifth section of the last-mentioned Act contained. FORMS.

AND IT IS HEREBY AGREED that a sole trustee for the time being of these presents shall be competent to act for all the purposes of the Settled Land Act 1882, including the receipt of capital money and notices thereunder. Declaration that sole trustee may receive capital money (*a*).

NAME AND ARMS CLAUSES *for insertion, if desired, in a* SETTLEMENT OF LAND *containing* LIMITATIONS *to* FEMALES *for Life and successively in Tail Male or in Tail; but giving only Equitable Interests for Life to* FEMALES (*b*).

PROVIDED ALWAYS, and it is hereby agreed and declared, that every person who by virtue of these presents shall become entitled as legal or equitable tenant for life or as tenant in tail male or in tail (*c*) to the possession or the receipt of the rents and profits of the premises hereinbefore expressed or intended to be hereby appointed and granted, and who shall not then use and bear the surname and arms of , shall within one year next after the time when he or she shall so become entitled in possession as aforesaid, unless he or she shall be an infant when he or she shall become so entitled as last aforesaid, and in that case within one year after he or she shall attain the age of twenty-one years; and every husband (*d*) of every female who shall so become entitled in possession as aforesaid and shall marry shall within one year after that female either shall so become entitled in possession as aforesaid or shall marry, whichever of those events shall last happen, take upon himself or herself, and use in all deeds and writings which he or she shall sign, and upon all occasions, the surname of either instead of or in addition to and after his or her own family surname, and quarter the arms of with his or her own family arms, and shall within the one year hereby made Direction to take and use name and arms.

(*a*) See Settled Land Act 1882, s. 39; Treatise, 707.

(*b*) *Ib.* 1268.

(*c*) It has been a very common practice to make this clause applicable to tenants in tail as well as to tenants for life, and the form in the text follows that practice; but it should be recollected that upon a tenant in tail the clauses can have little compulsive force, as such a tenant can, instead of complying with the direction, defeat the condition and gift over by executing a disentailing deed. Before 1834 the clauses might have been somewhat more efficacious, as a recovery could be suffered only in term.

(*d*) Exception is sometimes made of husbands who may be peers or eldest or only sons of peers. 3 Dav. Conv., 3rd ed., 1142, note.

FORMS.

applicable to the case apply for and endeavour to obtain a proper licence from the Crown, or take such other steps as may be requisite to authorise him or her so to take, use and bear the said surname and arms of ; AND FURTHER, that in case any person hereinbefore directed to take, use and bear the surname and arms of shall outlive the period within which he or she is hereinbefore directed so to do, and shall throughout that period, unless that person shall be a female who during any part of the year next succeeding her becoming so entitled as aforesaid or attaining the age of twenty-one years, whichever shall last happen, shall be a married woman and become a widow without herself having and without her husband having taken, used and borne the said name and arms, and in that case if that person shall throughout one year next after she shall so become a widow as aforesaid fail to take, use and bear the surname and arms of and to apply for and endeavour to obtain such a licence as aforesaid or to take such other steps as aforesaid, or shall at any time afterwards discontinue to use and bear the surname or arms of , Then and in every such case, immediately after the expiration of the period last hereinbefore referred to or immediately after such discontinuance as aforesaid, as the case may be, if the person who or whose husband having survived the same period shall so fail or discontinue as aforesaid shall be (*a*) legal or equitable tenant for life the limitations hereinbefore contained to the use of or in trust for that person and his or her assigns during his or her life shall absolutely determine and become void, and if the person who or whose husband shall so fail or discontinue as aforesaid shall be tenant in tail male or in tail, then every estate in tail male or in tail to which he or she shall by virtue of these presents be entitled, shall absolutely determine, And in every case in which an estate hereby limited shall so determine as aforesaid the premises hereinbefore expressed or intended to be hereby appointed and granted shall, subject to the proviso next hereinafter contained, immediately remain and be to the uses, upon the trusts, and in the manner, to, upon and in which the premises would by virtue of the limitations hereinbefore contained remain and be if the person whose estate or estates

Forfeiture on disobedience.

Substitutionary limitation (*b*).

(*a*) If legal estates are limited to women, insert here: "(either by himself or herself, or in the case of a married woman together with her husband)." Whether the Married Women's Property Act 1882 precludes a husband from taking a legal estate in his wife's land remains to be determined.

(*b*) Treatise, 1287.

shall have determined, being legal or equitable tenant for life, were dead, or being tenant in tail male or in tail, or in tail male and in tail, were dead and there were a general failure of issue inheritable under the limitation or limitations in tail male or in tail by virtue whereof he or she shall be tenant; PROVIDED ALWAYS, and it is hereby agreed and declared, that if and so often as, after the determination under the proviso last hereinbefore contained of any estate for life hereinbefore limited, the premises hereinbefore expressed or intended to be hereby appointed and granted shall by virtue of the limitations hereinbefore contained stand limited to some use which is intended to and may take effect in some contingency only, and in precedence to the then next vested remainder under the limitations hereinbefore contained, then and in every such case, and so long as any such contingent use or trust hereby limited as aforesaid shall be subsisting or capable of subsisting in the same premises so contingently and precedently as aforesaid, the same premises shall remain and be To the use of the said [*trustees*], their heirs and assigns, UPON TRUST that they shall either receive the rents and profits of the same premises and pay the same rents and profits to or permit them to be received by the person or persons who shall for the time being be entitled under these presents to the then first vested estate in remainder in the same premises.

Trust of rents during suspense in vesting (*a*).

(*a*) Treatise, 1296.

IX.

DEED *appointing a new* PROTECTOR (*a*) *under a* POWER *in a* MARRIAGE SETTLEMENT.

Parties (*b*). Recital (*b*) of settlement.

THIS INDENTURE, made the day of , 18 , BETWEEN [*donee of power*], of etc., of the one part; and [*new protector*], of etc., of the other part: WHEREAS, by an indenture bearing date the day of , and expressed to be made between etc. [*state parties' names*], being a settlement executed in consideration of the marriage then intended and since solemnised between [*husband*] and [*wife*], his wife, certain freehold lands and hereditaments situate and arising within the several counties of York, Lincoln, and Sussex, were conveyed and assured by the said [*husband's father*] and [*husband*], (subject to certain terms of years respectively created for the purposes therein expressed,) to the uses following, to take effect after the solemnisation of the said then intended marriage, that is to say, To the use of the said [*husband's father*] during his life, and from and after his decease to the use of the said [*husband*] during his life; and from and after his decease (subject to a rentcharge limited to the said [*wife*] during her life), to the use of the first and every other son of the said [*husband*] by his then intended or any after-taken wife or wives successively in tail male, with remainder to the first and every other son of the said [*husband*] by his then intended or any after-taken wife or successive wives in tail general, with the ultimate remainder to the use of the said [*intended husband's father*] in fee: And by the indenture now in recital, the said [*husband's father*] and

Remarks on the precedent in the text.

(*a*) See 3 & 4 Will. IV. c. 74, s. 32; Treatise, 1608. The recital in this precedent exhibits the form of an original appointment of a protector. The Act authorises the creation of a power to appoint new protectors only in the event of the death or the relinquishment of office by deed enrolled of a prior protector. The person nominated must not be an alien. The deed must be enrolled. The forms of deeds executed on a change of trustees will readily suggest the variations requisite to adapt the precedent in the text to the case of a protector relinquishing his office. The convenient course would be to comprehend both objects in one instrument. Considering that the protector's duty involves the mere exercise of a discretion without trouble or responsibility, relinquishment of the office is not likely often to occur. 9 Jarm. By. 470.

(*b*) As to parties and recitals, see Treatise, 278—284.

[*husband*], in pursuance of the power in that behalf contained in an Act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Common Recoveries, and the Substitution of more simple Modes of Assurance," respectively appointed the [*donee*] and [*deceased protector*] to be protectors of the settlement now being recited, during the lives of the said [*intended husband's father*] and [*intended husband*], and the life of the survivor of them; PROVIDED NEVERTHELESS, and it was thereby agreed and declared, and the said [*intended husband's father*] and [*intended husband*] did thereby direct that, in case during the lives of the said [*intended husband's father*] and [*intended husband*] or the life of the survivor of them, the said [*protectors*] or either of them or any protector to be appointed as thereinafter mentioned should die, or relinquish their or his office, then and in such case, and so often as the same should happen, it should be lawful for the survivor or other of the protectors for the time being, or if there should be no such protector then for the protectors or protector who should so relinquish their or his office, and if there should be no such relinquishing protector then for the executors or administrators of the last-deceased protector, to appoint any person or persons to be a protector or protectors in the room of the person or persons who should so die or should relinquish the office as aforesaid, either jointly with the continuing protector or solely, as the case might be; AND WHEREAS the said [*husband's father*] and [*husband*] are both living; AND WHEREAS the said [*deceased protector*], one of the protectors appointed by the hereinbefore-recited indenture of settlement as aforesaid, lately departed this life, and the said [*donee*] is desirous of nominating the said [*new protector*] in the room of the said [*deceased protector*], to be protector jointly with him the said [*donee*] of the hereinbefore-recited settlement, and the said [*new protector*] hath consented to accept the said office; NOW THIS INDENTURE WITNESSETH, that, in order to effectuate his said desire, and by virtue and in execution of the power and authority in this behalf contained in the hereinbefore-recited indenture and of all other powers and authorities enabling the said [*donee*] in this behalf, the said [*donee*] DOTH by these presents nominate and appoint the said [*new protector*] in the place of the said [*deceased protector*], deceased, to be protector of the hereinbefore-recited settlement jointly with the

PRECEDENT IX.

Appointment of new protector.

PRECEDENT IX. said [*donee*], in order and to the intent that the said [*new protector*] and [*donee*] from time to time, and at all times hereafter during the lives of the said [*husband's father*] and [*husband*] and the life of the survivor of them, shall and may have and exercise such and the like powers and authorities as protectors of the hereinbefore-recited settlement, as the said [*new protector*], jointly with the said [*donee*], would have had and might have exercised, and as fully and effectually to all intents and purposes as if their names had been inserted in the hereinbefore-recited settlement as protectors thereof instead of the names of the said [*deceased protector*] and [*donee*]; IN WITNESS, etc.

X.

DISENTAILING ASSURANCE *by a* TENANT IN TAIL *in Possession of* ENTAILED FREEHOLDS AND MONEY (*a*), *the Land limited to the use of the Tenant in Tail and the Money to be retained upon Trusts declared by a* MARRIAGE SETTLEMENT *of even Date.*

THIS INDENTURE, made the day of , 18 , Parties (*b*).
BETWEEN [*tenant in tail*], of etc., of the one part; and [*trustees*], of etc., of the other part; WHEREAS [*grandfather*], late of , deceased, the grandfather of the said [*tenant in tail*], being seised to him and his heirs for an estate in fee simple in possession of the hereditaments specified in the schedule marked (A) hereunder written, by his last will, bearing date the day of , devised all his freehold messuages, lands and hereditaments, To the use of his son [*name*], the father of the said [*tenant in tail*], during his life, and after his death to the use of all the children of the testator's said son successively according to seniority and the heirs of their respective bodies, with such remainders over as are therein mentioned; And the testator directed the executors of his said will to invest the sum of £ in the purchase of freehold lands and hereditaments, to be settled to the uses thereinbefore expressed concerning his freehold hereditaments; And until a convenient purchase could be made the said testator directed his said executors to invest the said trust money in real or Government securities, And to stand possessed of the said trust money and securities, and the interest and yearly produce thereof respectively, upon trust from time to time to pay the said interest and yearly produce to or permit the same to be received by the person or persons who, if the same money had been invested in the purchase of land, and that land had been so settled as aforesaid, would have been entitled for the time being to the rents and profits of the same land; And the said testator appointed [*names*], executors of his said will; AND

Recital (*b*) of will creating entail,

—of testator's death,

(*a*) With reference to disentailing deeds generally, see Treatise, 1587—1632; and to the practice of disentailing money subject to trusts for investment in land to be settled, *ib.* 1627-31.

(*b*) As to parties and recitals, *ib.* 278—284; as to supplemental deeds, below, p. 275.

PRECEDENT X.

WHEREAS the said testator died without revoking or altering his hereinbefore-recited will, and on the day of the same was duly proved by the said executors therein named in the Prerogative Court of the Archbishop of Canterbury;

—of tenant for life's death and grantor's being his only son,

AND WHEREAS the [*devisee for life*] died on the day of , 18 ; AND WHEREAS the said [*tenant in tail*] was the only child of the said [*devisee for life*];

—of investment of money,

AND WHEREAS the said [*executors*] being unable to procure a convenient purchase for the investment of the said trust money, pursuant to the direction of the hereinbefore-recited will, invested the same in the purchase of the several stocks, funds and securities specified in the schedule marked (B), hereunder written;

—of desire to bar entail.

AND WHEREAS the said [*tenant in tail*] is desirous of acquiring the absolute inheritance in fee simple in the hereditaments devised by the hereinbefore-recited will, and also of vesting the absolute interest in the said stocks, funds and securities, in the said [*trustees*] upon the trusts hereinafter declared or referred to concerning the same respectively;

Grant of freeholds.

NOW THIS INDENTURE WITNESSETH, that in order to effectuate the said desire, and to defeat all estates tail of the said [*tenant in tail*] in the hereditaments hereinafter described or referred to, and all estates, rights, titles, interests and powers, to take effect after the determination or in defeasance of such estates tail, and for the purpose of assuring the inheritance in fee simple in possession in the same hereditaments in the manner hereinafter expressed, the said [*tenant in tail*] DOTH hereby grant and dispose of, unto the said [*trustees*] and their heirs, All and singular the messuages, lands, tenements and hereditaments specified in the schedule marked (A), hereunder written, and all other the hereditaments, if any, wherein the said [*tenant in tail*] hath any estate tail, either in possession, reversion, remainder or expectancy, under or by virtue of the hereinbefore-recited will,

To hold.

TO HAVE AND TO HOLD the messuages, lands, hereditaments and premises intended to be hereby granted, freed and absolutely discharged of and from all estates tail of the said [*tenant in tail*], and all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the said estates tail, unto the said [*trustees*] and their heirs,

TO THE USE of the said [*tenant in tail*], his heirs and assigns, for ever;

Assignment of investments of money.

AND THIS INDENTURE ALSO WITNESSETH, that, in order further to effectuate the hereinbefore-recited desire of the said [*tenant in tail*], and to defeat and destroy all

estates tail of the said [*tenant in tail*], by virtue of the herein-before-recited will or otherwise, in the trust funds or securities hereby assigned or intended so to be, and all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of such estates tail, and to entitle and enable the said [*trustees*] (*a*) forthwith to obtain a transfer of the said trust funds and securities to be held by them upon the trusts and in the manner hereinafter expressed or referred to (*a*), the said [*tenant in tail*] DOTH hereby assign unto the said [*trustees*] (*a*), their executors, administrators and assigns, All those the several stocks, funds and securities, or parts or shares of stocks, funds and securities, specified in the schedule marked (B) hereunder written, and all other the legacies, money, stocks and securities (if any) which are subject to the hereinbefore-recited trust or direction for investment contained in the said will of the said [*testator*], deceased, and the dividends, interest and annual produce of the same respectively; TO HAVE, RECEIVE, AND TAKE the said money, stocks, funds, securities, and premises hereby assigned or intended so to be, unto the said [*trustees*] (*b*), their executors or administrators, upon the trusts, and to and for the intents and purposes, and subject to the powers, provisoes, declarations and agreements expressed and declared concerning the same in and by an indenture of settlement (*c*) already prepared, and intended to bear even date with these presents, and to be executed immediately after the execution hereof, and expressed or intended to be made between the said [*tenant in tail*] of the first part, [*intended wife*], of etc., the intended wife of the said [*tenant in tail*], of the second part, and the said [*trustees*] of the third part; IN WITNESS, etc. (*d*).

To hold.

SCHEDULE (A.), referred to in the preceding indenture [*specify lands in the usual manner*].

SCHEDULE (B.), referred to in the preceding indenture, [*specify securities in the usual manner*].

(*a*) If it is intended that the fund shall be vested in the assignor absolutely, substitute his name for those of the trustees, and omit the words: "to be held by them upon the trusts and in the manner hereinafter expressed or referred to."

(*b*) If that be the intent, substitute for the names of the trustees and the subsequent words down to "settlement" the name of the assignor, adding the word "absolutely."

(*c*) See the precedent of a settlement of money arising under the trusts of a contemporaneous deed, below, p. 124.

(*d*) The deed must be enrolled within six months (Treatise, 1618).

XI.

DISENTAILING ASSURANCE (*a*) *by* TENANT IN TAIL IN REMAINDER, *with the* CONSENT *only of the* PROTECTOR, *to* USE OF GRANTOR IN FEE SIMPLE.

Parties (*b*). THIS INDENTURE, made the day of , BETWEEN [*tenant in tail*], of etc., of the first part; [*protector*], of etc., of the second part; and [*grantee to uses*], of etc., of the third part. WHEREAS, by an indenture bearing date the day of , 18 , and expressed to be made between [*settlor*], of etc., of the first part; the said [*protector*], of the second part; [*protector's then intended wife*], of etc., spinster, of the third part; and [*trustees*], of etc., of the fourth part, (being a settlement executed previously to the marriage of the said [*protector*] and [*wife*], his wife; the said [*settlor*] did convey and assure the and hereditaments hereinafter described and expressed to be hereby granted, TO THE USES FOLLOWING (to take effect after the solemnisation of the said then intended marriage), that is to say, To the use of the said [*protector*] during his life, with remainder to the use of the said [*protector's wife*] during her life, with remainder (subject to a limitation to trustees for preserving contingent remainders) To the use of the first son of the said [*protector*] by the said [*wife*], his then intended wife, and the heirs of the body of such first son lawfully issuing, with such remainders over as are therein expressed; AND WHEREAS the said [*tenant in tail*] is the first son of the said marriage, and has attained the age of twenty-one years; AND WHEREAS the said [*tenant in tail*] is desirous of conveying and assuring the hereditaments so limited to him as aforesaid, subject to the prior life estates of the said [*protector*] and [*protector's*

Recital (*b*) of settlement creating entail,

—that grantor was eldest son.

(*a*) The objection formerly made to a remainderman conveying by grant at common law—namely, that it imposed the necessity of proving the subsistence of the particular estate—did not apply where the owner of that estate joined in the character of protector (9 Jarm. By. 488), and has long ceased to have any force (8 & 9 Vict. c. 106). As to disentailing deeds generally, see Treatise, 1587—1632.

(*b*) As to parties and recitals, *ib.* 278—284; as to supplemental deeds, below, p. 275.

wife], to the uses hereinafter expressed, and the said [*protector*], as the protector of the hereinbefore-recited settlement, hath agreed to concur in these presents for the purpose of testifying his consent thereto; NOW THIS INDENTURE WITNESSETH that, in order to effectuate the said desire and in pursuance of the said agreement, and for the purpose of defeating and destroying all estates tail of the said [*tenant in tail*], and all estates, rights, titles, interests and powers, to take effect after the determination or in defeasance of the same estates tail, the said [*tenant in tail*], with the consent and approbation of the said [*protector*], as the protector of the hereinbefore-recited settlement, testified by his execution hereof, DOTH by these presents grant and dispose of unto the said [*grantee to uses*], and his heirs, ALL THAT (*parcels*); TO HAVE AND TO HOLD the said hereditaments hereinbefore described, and all and singular other the premises hereby granted, or intended so to be, unto the said [*grantee to uses*] and his heirs for ever, subject nevertheless to the said life estates therein of the said [*protector*] and [*wife*] his wife (free and absolutely discharged of and from all estates tail of the said [*tenant in tail*] in the said hereditaments, and all estates, rights, titles, interests and powers, to take effect after the determination or in defeasance of the same estates tail), To the use of the said [*tenant in tail*] his heirs and assigns for ever; IN WITNESS, etc. (*a*).

PRECEDENT IX. Grant.

To hold.

To use of grantor in fee.

(*a*) The deed must be enrolled within six months (Treatise, 1618).

XII.

DISENTAILING ASSURANCE *by a* TENANT IN TAIL IN REMAINDER, *with Consent and Concurrence of* TENANT FOR LIFE IN POSSESSION *of* FREEHOLDS *and* PERSONALTY, *preserving Prior Powers, to Joint Appointment of Tenant for Life and Tenant in Tail* (*a*).

Parties (*b*).

THIS INDENTURE, made the day of 18 , BETWEEN the Most Noble *A* Duke of *X*, of etc., of the first part; *B B* of , esquire, commonly called the Most Honourable *B B* Marquis of *Y*, of etc., the eldest son and heir apparent of the said Duke by *C* Duchess of *X*, of the second part, and *C C B*, of etc., of the third part: [*Recital of a settlement made upon the marriage of the Duke and Duchess, whereby certain manors and hereditaments had been settled, subject to certain uses which had determined, to the use of trustees for ninety-nine years to secure a pin-money annuity of* £1000 *for Duchess, and subject thereto to the use of the Duke for life, with remainder to the use of trustees to preserve contingent uses, with remainder, subject to a jointure annuity of* £5000, *to Duchess if she survived the Duke, and to the usual powers and term of years for securing payment thereof, to the use of trustees for a thousand years, upon trusts for raising portions for younger children of the Duke and Duchess, with remainder to the use of their first and other sons successively in tail male, with divers remainders over, and whereby the Duke was empowered to charge with jointure and portions for wife and children of a subsequent marriage, and to exercise or consent to the exercise of powers of leasing, sale, exchange, etc.; Statements that the hereditaments specified in the first schedule to the present indenture, being parts of those comprised in the recited settlement, had been sold, that part of the purchase money had been invested in the purchase of the hereditaments specified in the second schedule to the present indenture, and that* £900, *part of the said purchase money, remained owing from*

(*a*) As to disentailing deeds generally, see Treatise, 1587—1632.

(*b*) As to parties and recitals, *ib.* 278—234; as to supplemental deeds, below, p. 275.

the S. Railway Company, the purchasers of part of the land sold.] AND WHEREAS the said [*Marquis*] is the first son of the said [*Duke*] by the said [*Duchess*] and he attained the age of twenty-one years on the day of , 1849; AND WHEREAS the said [*Duke and Marquis*] are desirous of barring and defeating the said estate in tail male and all other estates tail (if any) of the said [*Marquis*] in the manors and hereditaments now subject to the uses or limitations of the said indenture of settlement, and all remainders, reversions, estates, rights, titles and interests to take effect after the determination or in defeasance of such estate in tail male or estates in tail, but without prejudicing or disturbing the uses or estates respectively limited by the said indenture of settlement, or by reference thereto, which are prior or precedent to the use or estate in tail male thereby limited to the first son of the said [*Duke*] by the said [*Duchess*], and without prejudicing or disturbing the said powers of jointuring, of charging with portions and annual sums for maintenance, of granting mining and other leases, and of selling, exchanging and making partition, or the powers auxiliary thereto, or the power of appointing new trustees, or any other powers to the same prior or precedent estates respectively belonging or annexed or capable of being so exercised as to create any use, estate, or interest in priority to the said estate in tail male so limited to the use of the said [*Marquis*] as aforesaid, or any uses, estates, or interests created in exercise of any such powers as last aforesaid, and of limiting and assuring the same manors and hereditaments to the uses and in manner hereinafter mentioned, but subject to the said prior or precedent uses or estates and powers except so far as the joint power of appointment hereinafter limited to the said [*Duke and Marquis*] shall be as it is intended to be capable of overreaching the use or estate by the said indenture of settlement, or by reference thereto, limited to the said [*Duke*] and his assigns for his life, and the powers of jointuring, charging with portions and other powers to that estate annexed or capable of being exercised by the said [*Duke*]; AND WHEREAS the said [*Duke*] and [*Marquis*] are also desirous of barring and defeating the equitable estate in tail male and all other estates tail (if any) of the said [*Marquis*] in the said sum of £900, and in such other sums and investments as are hereinafter expressed to be hereby assigned, but without prejudicing or disturbing the aforesaid precedent, uses and

PRECEDENT XII

Recital of Marquis being first,

—of desire to bar entail.

PRECEDENT XII. Grant.

powers, and of declaring such other trusts of the said sums and investments as are hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire the said [*Duke*], with reference to the use or estate to which he is entitled for his life as aforesaid, doth hereby grant, convey and confirm, and the said [*Marquis*] (with the consent of the said [*Duke*] as protector of the settlement made by the said indenture of settlement, or by reference thereto), doth hereby grant, convey, dispose of and confirm unto the said *C C B* and his heirs, ALL THOSE the said manors, rectories, advowsons, capital and other messuages, farms, lands, tenements, tithes, hereditaments and premises in and by the said indenture of settlement respectively appointed and granted as hereinbefore is mentioned, AND ALL and singular the lands and other hereditaments particularly mentioned and comprised in the second schedule hereunder written or hereunto annexed; AND ALSO all rentcharges into or for which the tithes respectively appointed and granted and released by the said indenture of settlement, or by reference thereto, or any of them or any part or parts thereof, have been commuted under the Acts passed for the Commutation of Tithes or otherwise howsoever, SAVE AND EXCEPT out of this present assurance the lands and other hereditaments particularly described in the first schedule hereunto written or hereunto annexed, and all other the hereditaments (if any) which have been conveyed upon any sale or sales, exchange or exchanges under the powers of the said indenture of settlement, or under the provisions of any Act or Acts of Parliament for making a railway or railways, canal or canals, or otherwise, with their and every of their appurtenances; AND (by way of conveyance and not by way of exception) all and singular other the hereditaments (if any) of freehold tenure which either expressly or by reference or any other means or in any other manner are now legally or equitably subject to the uses or limitations of the said indenture of settlement, with their rights, members and appurtenances; TO HAVE AND TO HOLD the said manors, rectories, advowsons, capital and other messuages, farms, lands, tenements, tithes, rentcharges, hereditaments and all and singular other the premises hereinbefore granted and conveyed or intended so to be, with their rights, members and appur-

Parcels (*a*).

To hold.

(*a*) As to "general words" and "all the estate" clauses, see Treatise, 289.

tenances, unto the said *C C B* and his heirs, SUBJECT NEVERTHELESS and without prejudice to the [*Add a description of the several estates, interests and powers subject and without prejudice to which the deed is to operate*], but freed and discharged from the said estate in tail male and all other estates in tail male or in tail of the said [*Marquis*], and all remainders, reversions, estates, rights, titles and interests to take effect after the determination or in defeasance of such estates in tail male or estates tail; TO THE USES, upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinafter limited, declared and contained or referred to, of or concerning the same, (that is to say) TO SUCH USES, upon such trusts, and with and subject to such powers, provisoes, agreements and declarations as the said [*Duke and Marquis*] shall at any time or times during their joint lives, by any deed or deeds with or without power of revocation and new appointment, from time to time appoint, and in default of and until such appointment, and so far as no such appointment shall extend, TO THE USES, upon the trusts, and with and subject to the powers, provisoes, agreements and declarations which under and by virtue of the said indenture of settlement, or by reference thereto, were subsisting or capable of taking effect in or as to the same premises immediately before the sealing and delivery of these presents, so and in such manner as to corroborate and confirm the same uses, trusts, powers, provisoes, agreements and declarations: AND THIS INDENTURE FURTHER WITNESSETH, that for further effectuating the said desire the said [*Duke*], with reference to the estate for life to which he is entitled as aforesaid, DOTH hereby grant, assign and confirm, And the said [*Marquis*], with the consent of the said [*Duke*] as the protector of the said settlement, DOTH hereby assign, dispose of and confirm unto the said *C C B*, his executors, administrators and assigns, ALL THAT the said sum of £900 so as aforesaid owing in respect of the purchase money for the land sold to the said S Railway Company as hereinbefore is mentioned, which sum is now subject or liable to be laid out in the purchase of lands or hereditaments to be settled to the use of the said indenture of settlement, And all and every other

Saving of powers of prior settlement (*a*).

To uses Duke and Marquis shall jointly appoint (*b*).

And subject thereto to subsisting uses.

Assignment.

Purchase money.

(*a*) Treatise, 1507.

(*b*) As to general powers of appointment, *ib.* 1071; and as to succession duty with reference to such powers in single donees, *ib.* 1060; in joint donees, *ib.* 1064.

PRECEDENT XII.

the sums and sum of money (if any) which under or by virtue of the last-mentioned indenture or otherwise howsoever are or is subject or liable to be laid out in the purchase of lands or hereditaments to be settled to the subsisting uses of the same indenture, TO HAVE, HOLD, receive and take the said sum or sums of money and other the premises last hereinbefore assigned or expressed and intended so to be unto the said *C C B*, his executors, administrators and assigns, subject nevertheless and without prejudice as hereinbefore is mentioned with respect to the hereditaments and premises hereinbefore granted and conveyed or expressed and intended so to be, so far as the said sums or sum of money and premises are or is subject to or affected by the terms of years, rentcharges, other charges, trusts and powers hereinbefore mentioned and referred to, but freed and discharged from the said estate in tail male and all other estates in tail male or in tail of the said [*Marquis*], And all reversions, remainders, estates, rights, titles and interest to take effect upon the determination or in defeasance of such estates in tail male or estates tail; NEVERTHELESS UPON TRUST and to the intent that the lands or hereditaments to be purchased with the said sum or sums of money may go and be held to the uses, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisoes, agreements and declarations hereinbefore limited, declared and contained or referred to of or concerning the hereditaments and premises hereinbefore granted and conveyed or expressed and intended so to be; And that in the meantime and until such purchase the same sums or sum of money may be deemed of the nature of real estate, and be subject in equity to the uses, trusts, intents and purposes, powers, provisoes, agreements and declarations hereinbefore limited, declared and contained or referred to of or concerning the hereditaments and premises hereinbefore granted and conveyed or expressed and intended so to be; PROVIDED ALWAYS that if and whensoever any one person or any two or more persons together shall by virtue of the trusts hereinbefore declared of the said sum of money expressed to be hereby assigned be absolutely entitled in equity thereto, then notwithstanding any legal or other right to the said sum expressed to be hereby assigned or to the

To hold.

Upon trusts corresponding with uses of freeholds.

Authority to beneficiaries to give effectual receipts (*a*).

(*a*) This clause is inserted to preclude the possibility, adverted to by Mr. Hayes in a passage I have cited (Treatise, 1630), of the debtor requiring the receipt of the assignee—a possibility which may have become more nearly a probability now that debts are assignable at law.

interest thereof which is hereby given to the said *C C B*, that person or those persons, as the case may be, shall be entitled to receive and give an effectual receipt or effectual receipts for that sum and interest or any parts thereof respectively, And such receipt or receipts as last aforesaid shall determine all (if any) right to receive the sum or sums in the same receipt or receipts expressed to be received which may be hereby given to the said *C C B*; IN WITNESS, etc. (*a*).

Schedules.

The First Schedule to contain a description of the parts of the originally settled hereditaments which have been sold or given in exchange by the trustees of that settlement. The Second Schedule to specify lands and hereditaments which since the settlement have been purchased or received in exchange by the trustees and conveyed to the uses of the same settlement.

(*a*) The deed must be enrolled within six calendar months after its execution, and notice of it should be given to the company owing the debt assigned by it.

XIII.

DISENTAILING ASSURANCE *by Legal Tenant in tail in Possession of* COPYHOLDS *by* SURRENDER *in* COURT (*a*).

THE MANOR OF
in the county of

} A GENERAL COURT BARON of *A Z*, Lord of the Manor, holden in and for the said Manor on the day of . Before J. S., Steward of the said Manor.

Presentment of devise in tail,

AT this Court the homage PRESENT that T. W., late one of the customary tenants of this manor, whose death was presented at the last General Court, in and by his last will and testament in writing, bearing date etc. (the probate whereof is produced in Court), devised all his customary or copyhold hereditaments within this manor by the description of etc. unto the said *A B* and the heirs of his body, with certain remainders over;

—prayer for admittance,

Now at this Court comes the said *A B* and prays to be admitted to the customary or copyhold hereditaments lying within and

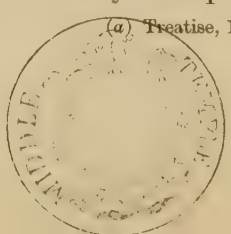
—admittance.

holden of this manor so devised to him as aforesaid, to wit, TO ALL etc. (to which said hereditaments the said T. W. was admitted at a Court holden for this manor on the day of), To which said *A B*, the lord of this manor, by the said steward grants seisin thereof by the rod, To have and to hold the said customary or copyhold hereditaments and premises with their appurtenances unto the said *A B* and the heirs of his body, according to the form and effect of the devise so made to him as aforesaid, to be holden of the lord by copy of Court roll, at the will of the lord, according to the custom of this manor by fealty, suit of court, and the ancient annual rent or rents and other duties and services therefor due and of right accustomed, And so (saving the right of the lord) the said *A B* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such his admittance the sum

In order to bar entail.

of £ and his fealty is respited; And afterwards at this

(*a*) Treatise, 1623.



Court comes the said *A B*, and for the purpose of barring and extinguishing the estate tail of and in the said hereditaments and premises to which the said *A B* is so entitled as aforesaid, and every if any other estate tail in the premises to which he may by the said will or otherwise be entitled, and all remainders and reversions, estates, rights, titles and interests to take effect after the determination or in defeasance of the said estates tail or any of them, and of vesting the same premises in the said *A B* and his heirs, according to the custom of this manor, absolutely, and by virtue and in pursuance of the provisions in this behalf contained in an Act of Parliament passed in the third and fourth years of the reign of His late Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, DID in open Court SURRENDER into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the messuages, hereditaments and premises hereinbefore described, with the appurtenances to the same premises belonging or appertaining, TO THE USE of the said *A B*, his heirs and assigns for ever, according to the custom of this manor; TO WHICH said *A B*, upon his prayer, the lord of this manor, by the said steward, grants seisin of the said premises by the rod, To have and to hold the said customary or copyhold messuages, hereditaments and premises with their appurtenances unto the said *A B* and his heirs, to be holden of the lord by copy of court roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefor due and of right accustomed; and so (saving the right of the lord) the said *A B* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord for a fine on such his admittance the sum of £ , and his fealty is respited.

PRECED. XIII.

Surrender.

To use of surrenderor.

Admittance.

XIV.

DISENTAILING ASSURANCE *by* LEGAL TENANT IN TAIL *in* REMAINDER *of* COPYHOLDS *by Surrender out of Court with consent of* PROTECTOR (*a*).

MANOR of in the county of .

Recital of admittance of testator,

WHEREAS at a customary Court holden in and for this manor on the day of , 18 , *A*, late of etc., was admitted tenant of ALL THAT etc. [*description of parcels as in admittance*], with their rights, easements and appurtenances, to be holden at the will of the lord according to the custom of the manor and by and subject to the payment and performance of the rents, suits and services therefor due and of right accustomed; AND WHEREAS the said *A* made his will, bearing date the day of , 18 , and thereby devised his said copyhold hereditaments to his son *B* and his assigns during the life of the said *B* with remainder to the use of the first and other sons of the said *B* successively in tail male with divers remainders over; AND WHEREAS the said *A* died on the day of , 1865, without having revoked or altered his said will, which was on the day of , 1865, proved in the Court of Probate at the Principal Registry thereof; AND WHEREAS on the day of , 18 , the said *B* was, at a Court that day holden in and for the said manor, admitted tenant of the said hereditaments to which the said *A* had been so admitted as aforesaid, to hold the same unto the said *B* and his assigns during his life, with remainder to the use of his first and other sons successively in tail male, with divers remainders over according to the form and effect of the hereinbefore-recited devise, And also to hold the same of the lord by copy of court roll at the will of the lord according to the custom of this manor by and subject to the payment and performance of the rents and services therefor due and of right accustomed; AND WHEREAS on the day of , 18 , the said *B*, being then a bachelor, intermarried at the

—of his will,

—of his death,

—of admittance of tenant for life,

—of his marriage,

(*a*) Treatise, 1623.

parish church of in the county of with *C* his wife, then *C Z* spinster; AND WHEREAS there has been issue of the said *B* by the said *C* his wife, *Y* his eldest son and other after-born children; AND WHEREAS the said *Y* attained the age of twenty-one years on the day of last; NOW THEREFORE BE IT REMEMBERED that on the day of , 18 , the said *Y* and *B* came before J. S., Esq., steward of the said manor, and the said *Y*, with the consent of the said *B* (*a*) as protector of the settlement made by the hereinbefore-recited will, DID SURRENDER into the hands of the lord of the said manor by the hands and acceptance of his said steward according to the custom of the said manor, ALL and singular the said messuages, land and hereditaments to which the said *B* was so admitted tenant on the day of , 18 , as aforesaid, And all other the hereditaments (if any) which are holden of the said manor of which are now subject at law or in equity to the uses created by the said will, TOGETHER WITH ALL and singular commons and commonable rights, ways, rights, members and appurtenances to the said messuages, land and hereditaments respectively belonging or appertaining, TO THE USE of the said *Y*, his heirs and assigns for ever, at the will of the lord according to the custom of the said manor and subject to the payment and performance of the rents, fines, heriots, suits and services therefor due and of right accustomed, And also subject to the estate for life of the said *B* and to all powers annexed to that estate for life, But freed and discharged from the said estate in tail male of the said *Y*, and all remainders, reversions, estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the said estate in tail male.

PRECED. XIV.

—of birth of tenant in tail male,

—of his attaining twenty-one.

Parcels.

Use in customary fee.

Taken and accepted the day and year first above written by me,

J. S., Steward of the said manor (*b*).

(*a*) For the manner in which the consent must be given, see Treatise, 1624.

(*b*) This memorandum need not be enrolled in the High Court, but must be entered on the Court Rolls of the manor, and probably within six months (*Ib.* 1624-5). The form can readily be varied to suit the case of a disentailing deed by a tenant in possession. For that purpose the recitals must show that the surrenderor's estate has fallen into possession, and the passages relating to the protector and his estate must be omitted. Where the equitable tenant in tail was a married woman, the Act requires that she should be separately examined (*ib.* 1615), and in such a case it may be prudent that the same precaution be still taken notwithstanding the Married Women's Property Act 1882.

XV.

DISENTAILING ASSURANCE *by* EQUITABLE TENANT IN TAIL *in Possession of* COPYHOLDS (*a*).

Parties (*b*). THIS INDENTURE, made the day of , 18 ,
Recitals (*b*). BETWEEN [*tenant in tail*], of etc., of the one part; and [*grantee*], of etc., of the other part. [*Recitals showing marriage settlement creating equitable entail by covenant to surrender and surrender pursuant thereto; that tenant in tail was the only child of the marriage, and that his father and mother*
Grant. *are both dead.*] NOW THIS INDENTURE WITNESSETH, that, for the purpose of defeating and destroying all estates tail in equity or otherwise of the said [*tenant in tail*] in the said copyhold messuage and hereditaments, and all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the same estates tail, and in order to limit and assure the customary inheritance in fee simple in the same hereditaments to the use hereinafter expressed, the said [*tenant in tail*] DOTH by these presents
Parcels. grant and dispose of unto the said [*grantee*] and his heirs, ALL AND SINGULAR the messuage, hereditaments and premises hereinbefore described, and all other the copyhold hereditaments (if any) comprised in the hereinbefore-recited indenture, or expressed or intended so to be, with their and every of their
To hold. appurtenances; TO HOLD the said messuage, hereditaments and premises hereinbefore described, and all and singular other the premises expressed to be hereby granted, Free and absolutely discharged of and from all estates tail of the said [*tenant in tail*] in the same hereditaments, and all estates, rights, titles, interests and powers to take effect after the determination or in defeasance of the same estates tail, Unto the said [*grantee*] and his heirs; TO THE USE of the said [*tenant in tail*], his heirs and assigns, for ever; according to the custom of the said manor; IN WITNESS, etc.

(*a*) This deed must be entered on the Court Rolls within six calendar months after its date, but need not be enrolled at the central office of the High Court (Treatise, 1625-6). Where the equitable tenant in tail was a married woman, the Act required that the deed should be acknowledged by her. See p. 103, note (*b*).

(*b*) See Treatise, 278—284; as to supplemental deeds, below, p. 275.

XVI.

DISENTAILING ASSURANCE *by* EQUITABLE TENANT IN TAIL MALE IN REMAINDER *of* COPYHOLDS *with Consent of* PROTECTOR (*a*).

THIS INDENTURE, made the day of , 18 , Parties (*b*).
BETWEEN (*Parties same as those in Precedent XII.*). WHEREAS Recitals (*b*) of settlement,
by an indenture bearing date the day of , 18 [*recite this settlement, of which the contents are stated above, p.* 94], And by the said indenture the said [*Duke*] covenanted that if the said then intended marriage should be solemnised he would surrender into the hands of the lord or lords, lady or ladies of the manor, in the county of , the copyhold hereditaments hereinafter described, To THE USE of the said *C* and *D*, their heirs and assigns for ever, according to the custom of the said manor, and subject to the payment and performance of the rents, fines, heriots, suits and services therefor due and of right accustomed, but upon such trusts and with and subject to such powers, provisoes, agreements and declarations as would most nearly correspond with the uses, trusts, limitations, powers, provisoes, agreements and declarations thereinbefore limited, declared and contained of and concerning the said freehold hereditaments expressed to be thereby appointed and granted, so far as the different tenures of the same estates respectively and the rules of law and equity would permit, but not so as to increase or multiply charges or powers of charging; AND WHEREAS on the day of , 18 , the said [*Duke*] —of surrender, came before J. S., steward of the said manor, and in performance of the said covenant in that behalf did out of court duly surrender into the hands of the lord of the said manor the said hereditaments to which [*Duke*] was so admitted tenant on the day of , 18 , To the use of the said *C* and *D*, their heirs and assigns for ever, according to the custom of the said manor, but nevertheless upon the trusts and with and subject to the powers, provisoes, agreements and declarations upon, with and subject to which the said customary hereditaments

(*a*) Treatise, 1623, 1624. (*b*) As to parties and recitals, *ib.* 278—284.

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were by an indenture which was referred to in the memorandum of the said surrender entered on the Court Rolls of the said manor, and was the hereinbefore-recited indenture covenanted to be surrendered; AND WHEREAS on the day of , 18 , the said *C* and *D* were out of court admitted tenants of the said copyhold hereditaments; AND WHEREAS the said [*Marquis*] is the first son of the said [*Duke*], and attained the age of twenty-one years on the day of , 18 ; AND WHEREAS the said [*Duke*] and [*Marquis*] are desirous of barring and defeating the equitable estate in tail male and all other equitable estates tail (if any) of him the said [*Marquis*], in the said customary or copyhold closes of land and hereditaments, and all remainders, reversions, estates, rights, titles and interests to take effect after the determination or in defeasance of such equitable estate in tail male or estates in tail male or in tail, and of assuring the same hereditaments upon the trusts and subject to the power of appointment hereinafter contained, subject nevertheless as hereinafter is mentioned: NOW THIS INDENTURE WITNESSETH that for effectuating the said desire the said [*Duke*] with respect to the estate for life to which he is entitled as aforesaid, Doth hereby grant and convey, and the said [*Marquis*], with the consent of the said [*Duke*] as protector of the settlement made by the said indenture of the day of , 18 , Doth hereby grant, convey and dispose of unto the said *C C B* his heirs and assigns, ALL THOSE etc. [*description of parcels as in Admittance of C and D*] being the hereditaments to which the said *C* and *D* were so admitted tenants as aforesaid, TO HOLD the said closes of land and other the premises hereby granted and conveyed or intended so to be unto the said *C C B* his heirs and assigns, Subject nevertheless and without prejudice to the said equitable estate and interests prior or precedent to the equitable estate in tail male to which the said [*Marquis*] is entitled as aforesaid, and to the powers and privileges to the same prior or precedent estates annexed or belonging, or capable of being so exercised as to create any use, estate or interest in priority to the said estate in tail male of the said [*Marquis*], and to any estates or interests created in exercise of any such powers as last aforesaid, so far as the same estates, powers and privileges affect the said customary or copyhold hereditaments and premises, except so far as the joint power of appointment hereinafter limited to the said [*Duke and Marquis*] shall be, as it

—of Marquis being first son,

—of desire to bar entail.

Grant

Parcels.

To hold.

is intended to be, capable of overreaching the trust by the said indenture of settlement or by reference thereto limited to the said [*Duke*] and his assigns for his life and the powers to that trust annexed or capable of being exercised by the said [*Duke*], But freed and discharged from the said equitable estate in tail male and all other equitable estates in tail male or in tail of the said [*Marquis*], and from all remainders, reversions, estates, rights, titles and interests to take effect upon the determination or in defeasance of the said equitable estate or estates in tail male or in tail, except so far as the same may be overreached by the power of appointment hereinafter limited; Nevertheless upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisoes, agreements and declarations hereinafter limited, declared and contained or referred to of and concerning the same, (that is to say) Upon such trusts and with and subject to such powers, provisoes, agreements and declarations as the said [*Duke*] and [*Marquis*] shall at any time or times during their joint lives, by any deed or deeds with or without power of revocation and new appointment, from time to time appoint; and in default of and until such appointment, and so far as no such appointment shall extend, Upon the trusts and with and subject to the powers, provisoes, agreements and declarations which by virtue of the said indenture of the day of , 18 , and the said surrender made in pursuance thereof, were subsisting or capable of taking effect in or as to the same premises immediately before the sealing and delivery of these presents so and in such manner as to corroborate and confirm the same trusts, intents and purposes, powers, provisoes, agreements and declarations; IN WITNESS, etc. (*a*)

Upon trusts father and son shall appoint,

And in default, upon subsisting trusts.

(*a*) The deed must be entered on the Court Rolls within six calendar months after its execution (Treatise, 1625).

XVII.

SETTLEMENT ON MARRIAGE *of the* WIFE'S CONSOLIDATED £3 PER CENT. ANNUITIES. *Trusts for Investment—for* WIFE *for life, for* HUSBAND *for life, for* ISSUE *as Husband and Wife or Survivor shall appoint; in default for* CHILDREN. *Hotchpot. Advancement. Trusts in Default of Issue. Covenant for Settlement of after-acquired Property. Trustee Clauses. Power for* WIFE *if she survive, and there be only two Children, to withdraw part of the Fund and appoint substituted Trusts for after-taken* HUSBAND *and* CHILDREN *by him.*

Parties (*a*).

THIS INDENTURE, made the day of , 18 , BETWEEN [*intended husband*] of etc., of the first part, [*intended wife*] of etc., of the second part, and [*trustees*] of etc., of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS upon the treaty for the said intended marriage it was agreed by the parties hereto that the sum of £ Consolidated £3 per cent. Annuities belonging to the said [*intended wife*], should be transferred into the names of the said [*trustees*] and should be settled in the manner hereinafter appearing; AND WHEREAS upon the treaty for the said intended marriage it was also agreed that the said [*intended husband and wife*] should enter into the covenants hereinafter contained for settling such other real and personal property of or capable of being appointed by the said [*intended wife*] as hereinafter in the said covenants is described upon and for such trusts, intents and purposes, and with, under and subject to such powers, provisoes, agreements and declarations as are hereinafter expressed or referred to in that behalf; AND WHEREAS in part performance of the said agreement the said sum of £ Consolidated £3 per centum Annuities has been transferred by the said [*intended wife*] in the books of the Governor and Company of the Bank of England into the

Recitals (*a*) of intended marriage,

—of agreement to settle consols,

—to covenant to settle after-acquired property,

—of transfer of consols.

(*a*) As to parties and recitals, see Treatise, 278—284.

joint names of the said [*trustees*]; NOW THIS INDENTURE WITNESSETH that in further performance of the said agreement and in consideration of the said intended marriage, it is hereby agreed and declared that the said [*trustees*] shall stand possessed of and be interested in the said sum of £ Consolidated £3 per centum Annuities IN TRUST for the said [*intended wife*], her executors, administrators and assigns, until the said intended marriage shall be solemnised; AND that after the solemnisation thereof the trustees or trustee of these presents for the time being shall either permit the said sum of £ Consolidated £3 per cent. Annuities to remain in its present state of investment, or shall at any time or times, with the consent of the said [*intended husband and wife*] during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee for the time being, sell any part or parts or the whole thereof and invest the money to be produced thereby in the names or name of the said trustees or trustee for the time being in or upon any of the stocks, funds or securities (not being capable of transfer by indorsement and delivery or by delivery merely) of the Government either of the United Kingdom or of India, or of any other colony or dependency of the United Kingdom or of any foreign country, or upon the security of hereditaments situate in England or Wales, and not in Scotland or Ireland, of whatever tenure, and whether held for an estate of inheritance in fee simple or of customary inheritance, or for any term of years whereof sixty shall be unexpired at the taking of the security, whether the same shall or shall not be subject to a proviso for re-entry on non-payment of rent, or breach or non-observance of covenant (*a*), or in or upon the stocks, funds, shares, debentures, mortgages or securities (not being capable of transfer by indorsement and delivery or by delivery merely) of any corporation, company, or public body, municipal, com-

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Declaration of trust of consols

for wife till marriage;

afterwards to retain,

or sell and reinvest.

(*a*) The liability of leasehold property in most cases to forfeiture, notwithstanding the mitigation by statute of the consequences of many forfeitures, still detracts much from the suitability of such property for mortgage securities; and, as every term of years is not subject to this liability, trustees might possibly, though not perhaps probably, without the express authority given in the text, be held to act imprudently in lending on leaseholds which are subject to forfeiture. The bulk of the leaseholds, however, available as securities are subject to this liability; and when it is intended that trustees shall be at liberty to lend on mortgages of leaseholds, it is ordinarily meant that they may lend on leaseholds liable to forfeiture. It seems, therefore, better either to use the form in the text, or expressly to so confine the authority as that it authorises loans only on leaseholds not liable to forfeiture, or not authorise loans on leaseholds at all.

PRECED. XVII.

Power to vary investments.

Income to wife for life.

—to husband for life.

Capital for issue as parents

mercial or otherwise, in the United Kingdom, or India, or any other colony or dependency of the United Kingdom (*a*): AND MAY with such consent or at such discretion as aforesaid from time to time alter and vary the said investments for others of the kinds above described: AND SHALL pay the dividends, interest and yearly produce of the said sum of £ Consolidated £3 per cent. Annuities, and of the money, stocks, funds, shares and securities into which the same or any part thereof may be converted (all which original and substituted money, stocks, funds and securities are hereinafter included in the term trust fund), to the said [*intended wife*] during her life, yet so that during the said intended coverture the said dividends, interest and yearly produce may be for her sole and separate use without power of anticipation (*b*): AND SHALL after the death of the said [*intended wife*], if the said [*intended husband*] shall survive her, pay the said dividends, interest and yearly produce to the said [*intended husband*] and his assigns during his life. AND after the death of the survivor of the said [*intended husband and wife*] the trustees or trustee for the time being of these presents shall stand possessed of the trust fund, and the dividends, interest and yearly produce thereof, IN TRUST for all or such one or more exclusively of the others or other of the issue of the said intended marriage at such age or time or respective ages or times, and if for more than one of such issue in such shares and with such executory and other trusts for the benefit of the said issue or some or one of them, and with such provisions for the maintenance, education, advancement and benefit of all or any of those objects, at the discretion of the trustees or trustee for the time being of these presents or of any other persons or person, and upon such conditions, with such restrictions and in such manner as the said [*intended husband and wife*] by any deed or deeds, writing or writings, sealed and delivered by them respectively with or without power of revocation and new appointment and without transgressing the rule against perpetuities [and also without giving to any male object of this power a vested interest before he shall attain the age of twenty-one years, or to a female object of this power a vested interest before she shall attain

(*a*) See other investment clauses, below, pp. 120—122. In accordance with a widely used practice of late years, this clause authorises the acceptance of ordinary stock and shares in joint stock companies, but the prudence of so doing is questionable. As to investments of trust money see Treatise, pp. 428—483.

(*b*) As to trusts for separate use, see Treatise, 747—856; words of creation, *ib.* 754; restraint on anticipation, *ib.* 826—843.

that age or marry (*a*)], shall jointly appoint; AND in default of such joint appointment and so far as no such joint appointment shall extend then as the survivor of the said [*intended husband and wife*] by any deed or deeds, writing or writings sealed and delivered by him or her with or without power of revocation and new appointment, or by his or her last will or any codicil thereto, and without transgressing the rule against perpetuities [and also without giving to any male object of this power a vested interest before he shall attain the age of twenty-one years, or to any female object of this power a vested interest before she shall attain that age or marry (*a*)], shall appoint; AND in default of any such appointment as aforesaid, and so far as no such appointment as aforesaid shall extend, IN TRUST for all the children or any the child of the said intended marriage who being sons or a son shall attain the age of twenty-one years or being daughters or a daughter shall attain that age or marry under that age, and if more than one in equal shares; [PROVIDED ALWAYS that if any son or sons of the said intended marriage shall die under the age of twenty-one years leaving issue, then and in every such case, subject to any appointment or appointments under the powers hereinbefore contained respectively, the issue of every such son so dying as aforesaid shall be entitled to the share or shares to which under the trusts and provisions in these presents contained the deceased parent of such issue would have been entitled of and in the trust fund if such parent had attained the age of twenty-one years, and such issue if more than one shall take their parent's share equally between them]; PROVIDED ALWAYS that, unless the said [*intended husband and wife*] or the survivor of them shall in manner aforesaid appoint the contrary, no child [or grandchild (*d*)] of the said intended marriage, to whom or to whose issue [or parent (*d*)] any part of the trust fund shall have been appointed as aforesaid shall be entitled to any share of the unappointed part of the trust fund without bringing the part so appointed into hotchpot and accounting

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shall appoint, and in default

for children.

Proviso that issue of sons dying under twenty-one shall take their parents' shares (*b*).

Hotchpot (*c*).

(*a*) As to these clauses, see Treatise, 1196, 1224.

(*b*) Clauses substantially like this were printed in Bythewood's "Precedents" (see 9 Jarm. By. 324, and note, p. 196), and in the late Mr. Francis Housman's "Selections of Precedents in Conveyancing." Reasons for adopting it as a common form are advanced in the Treatise, 1229, 1230; but I believe that it has been only rarely used. It is printed here in brackets for adoption or omission at the choice of the draftsman. Its omission will not require any other change in the form of the precedent than that noted below.

(*c*) Treatise, 1220.

(*d*) If the preceding clause be not used, omit these words.

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for the same accordingly; AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the said trustees or trustee for the time being at any time or times, but during the lives of the said [*intended husband and wife*] or the life of the survivor of them only with their, his or her consent in writing, to raise any part or parts not exceeding altogether one-half of the then expectant or presumptive or vested share or respective shares in the trust fund of the child or children of the said intended marriage or any of them under the trusts hereinbefore declared, and to pay or apply the same for his, her or their respective advancement or benefit, as the said trustees or trustee for the time being shall think fit; AND IT IS HEREBY AGREED AND DECLARED that if there shall not be any person in whom the trust fund shall become absolutely vested under the trusts and powers hereinbefore contained, the trustees or trustee for the time being of these presents shall, subject to and after the determination and failure of the trusts aforesaid, stand possessed of the trust fund and the dividends, interest and yearly produce thereof, or of so much of the same respectively as shall not have become absolutely vested or been applied under any of the trusts or powers hereinbefore contained, or under any statutory power; UPON THE TRUSTS following, (that is to say) UPON SUCH TRUSTS as the said [*intended wife*] shall by will or codicil appoint; AND in default of such appointment and so far as no such appointment shall extend, UPON THE TRUSTS following, (that is to say) IF the said, [*intended wife*] shall survive the said [*intended husband*] IN TRUST for the said [*intended wife*], her executors, administrators and assigns, for her sole and separate use, but so as that during her said intended coverture she shall not have power to alienate the interest given to her by this trust; BUT IF the said [*intended wife*] shall die in the lifetime of the said [*intended husband*] IN TRUST for such person or persons as under the statutes for the distribution of the effects of intestate persons would have become entitled thereto at the death of the said [*intended wife*] if she had never been married and had died possessed thereof intestate and domiciled in England, such persons to take as owners in common in the shares in which they would have taken under the same statutes; AND THIS INDENTURE ALSO WITNESSETH that, in pursuance of the said agreement in this

Advancement (*a*).

In default of issue trust fund to be (*b*)

Upon trust as wife shall by will appoint,

and subject thereto

if wife survive for her.

If husband survive for wife's next-of-kin.

Covenant to settle wife's other and after-acquired property (*c*).

(*a*) Treatise, 1049. (*b*) *Ib.* 1241—1259. (*c*) *Ib.* 229—262.

behalf, and for the consideration aforesaid, the said [*intended husband and wife*] do jointly and each of them doth separately covenant with the said [*trustees*] that if the said intended marriage shall be solemnised and if the said [*intended wife*] shall then be or become or during the continuance of the said intended coverture shall become either certainly or contingently entitled to or able absolutely to dispose by deed or writing of any real or personal property for any estate or interest, whether in possession or in expectancy (other than the funds hereby settled as aforesaid and other than every such accretion of property as being wholly derived at one time from one source shall not exceed in value the sum of £ , and other than jewels, trinkets, ornaments, furniture, plate, pictures, prints and books, and other corporeal chattels (*a*), and other than any savings which the said [*intended wife*] may make out of her income, and other than such (if any) chattels, estates or interests as she may purchase with or out of any such income or savings as lastly aforesaid), Then and so often as the same shall happen the said [*intended husband and wife*], or the said [*intended wife*] as the case may require, and all other necessary parties, shall at the cost of the trust estate hereby already settled (*b*) or of that to be settled in performance of this covenant, and as soon in every such case as conveniently may be, and to the satisfaction of the said trustees or trustee for the time being, assure the said real or personal property to which the said [*intended wife*] shall at her said marriage be or become or during the continuance of the said intended coverture shall become so entitled or so able to appoint as aforesaid other than as aforesaid to (*c*), or otherwise cause the same to be vested in the said trustees or trustee for the time being; UPON TRUST that they or he shall, as to property wherein they or he shall acquire an estate or interest in possession, with all convenient speed, and as to property wherein they or he shall acquire or become entitled to an expectant interest, either when that estate or interest shall fall into possession, or previously if it shall appear to the said trustees or trustee for the time being that the capital of the

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Exceptions.

Trust for conversion.

(*a*) In cases where the wife expects accessions of property of this kind, of such value or character as to induce the wish that it should be settled, provision must be made accordingly.

(*b*) If property be settled by the husband by the same deed, these words should be so modified as to make liable the property settled on the part of the wife only.

(*c*) If in any case it were wished that after-acquired real estate should be limited to uses in strict settlement, this is the point at which the necessary variation of form would begin.

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trust estate will probably be injured by deferring the sale, sell or call in or convert into money such part or parts of the said property as shall not consist of a present interest in money or in stocks, funds, shares or securities hereinbefore authorised as investments, or in an annuity or annuities or other estate or interest for the life of the said [*intended wife*], or for any term or period determinable by her death or during her life; AND SHALL stand possessed of the money to arise from such sale, calling in and conversion, and of such part or parts of the said property as shall consist of money, or of such stocks, funds, shares or securities as aforesaid, and of the stocks, funds, shares and securities in or upon which such money respectively may be invested, and of the yearly produce of the same money, stocks, funds, shares and securities respectively, upon (*a*) the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinbefore contained concerning the money to arise from the sale of the said sum of £ Consolidated £3 per centum Annuities, and the stocks, funds, shares or securities in or upon which such money may be invested, and the yearly produce thereof respectively, AND UPON TRUST that the said trustees or trustee for the time being shall pay and apply any annuity or annuities and the yearly produce received in respect of any estate or interest for the life of the said [*intended wife*], or for any term or period determinable on her death or during her life (*b*), to the said [*intended wife*], but so as that while she may be subject to coverture the same may be for her separate use without power of anticipation; PROVIDED NEVERTHELESS that the said trustees or trustee for the time being may with the consent in writing of the said [*intended wife*] at any time sell every or any such annuity and estate or interest as last aforesaid; so, nevertheless, that the money to arise from such sale be held UPON THE TRUSTS and with and subject to the powers, provisoes, agreements and declarations hereinbefore contained concerning such part of the property of or to which the said

and reinvestment.

Trust of wife's life interests.

Power to sell them.

(*a*) In using this form see that it applies accurately to the other part of the settlement in which it is inserted; and, if it does not, vary the form as the case may require.

(*b*) The intended wife would in most cases be entitled to the income if the trust were declared by reference to the trusts of the originally settled fund. In any case in which the first life interest in the wife's fortune was given to the husband, and it was intended that he should in like manner take a life interest in such annuities and life interests of his wife as are here referred to, it will be necessary to substitute for this direction to pay the annuities and income to her, either such an express direction to pay as the case may require, or such a referential trust as may be appropriate to the case.

[*intended wife*] at her said marriage shall be or become or during the said intended coverture shall become so entitled or so able to appoint as aforesaid, other than as aforesaid, as shall consist originally of money; PROVIDED ALSO, and it is hereby agreed and declared, that no trustee of these presents shall be answerable for any loss which may accrue by reason of the covenant to settle such other property than that hereinbefore expressed to be hereby settled as aforesaid hereinbefore contained not being enforced, unless some other trustee or some person beneficially interested by virtue of these presents shall have in writing requested that trustee to enforce or concur in enforcing the same covenant; but nothing hereinbefore contained shall at any time prevent the said trustees or trustee of these presents for the time being from enforcing such covenant as last aforesaid if they or he shall think fit; PROVIDED ALSO, and it is hereby agreed and declared, that whensoever in performance of the covenants of the said [*intended husband and wife*], or of the covenant of either of them hereinbefore contained, any property other than money or stocks, funds, shares or securities of the kinds hereinbefore authorised as investments shall have become vested in the said trustees or trustee for the time being, it shall be lawful for them or him if they or he shall in their or his discretion think fit, and notwithstanding the trust for sale hereinbefore contained, and although the same property or any part thereof may be of a precarious or wasting character, to retain the same or any part or parts thereof during the lives of the said [*intended husband and wife*] and the life of the survivor of them, unless they during their joint lives or the survivor of them during his or her life shall in writing request the said trustees or trustee for the time being to sell the same property or the same part or parts thereof, AND also during any period after the death of the survivor of the said [*intended husband and wife*] and before the last-mentioned property shall have become absolutely vested in some person or persons capable of absolutely disposing thereof during which the said trustees or trustee for the time being shall think fit to retain the same property or any part or parts thereof; AND IT IS HEREBY FURTHER AGREED AND DECLARED that such (if any) real estate as may be vested in the said trustees or trustee in performance of the said covenants or covenant and as may be so retained as aforesaid,

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Exoneration of trustees from liability (*a*).

Power to retain wasting investments (*b*).

Realty to be deemed personalty.

(*a*) Treatise, 1429. (*b*) *Ib.* 420—424.

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shall nevertheless, for the purpose of the transmission of the beneficial interest therein, be treated as having the quality of personalty; AND FURTHER, that so long as any property, whether real or personal, shall be retained by the said trustees or trustee for the time being in obedience to the direction or exercise of the power in that behalf hereinbefore contained, the said trustees or trustee for the time being shall not retain and appropriate as capital any of the yearly produce of the same property, but shall pay and apply the whole of the same yearly produce to the persons, for the purposes and in the manner to whom and for and in which the yearly produce of the money to be produced by the sale or calling in of the same property, or of the stocks, funds, shares or securities in or upon which the last-mentioned money might be invested would be payable or applicable under the trusts herein contained if the same property had been sold or called in and the money produced thereby had been so invested as aforesaid; PROVIDED ALWAYS, and it is hereby declared, that if any property which is or shall become subject to any trusts hereby declared shall consist of shares in the capital of any company not fully paid up or of any leasehold property or of any other property the registered or legal owner whereof is or may be subject to any liability in respect of the same, then the trustees or trustee of these presents for the time being shall not be bound to accept or take any transfer of such property so as to involve themselves or himself in any liability in respect of the same; PROVIDED ALWAYS, and it is hereby agreed and declared, that upon lending trust-money on any mortgage securities the trustees or trustee for the time being of these presents shall be at liberty to accept titles which are not strictly marketable, and in particular to dispense either wholly or partially with lessors' and underlessors' titles to leasehold hereditaments, and with the consent of the said [*intended husband and wife*] during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the said trustees or trustee for the time being, to accept other real security for any part of the trust property which may be invested on real security in lieu of all or any of the hereditaments comprised in any such security, and also to release from any such security any of the hereditaments therein comprised without which the said trustees or trustee for the time being shall deem the existing security

All income to belong to tenant in possession.

Trustees need not accept onerous property.

Trustee clauses.

or securities sufficient (*a*). AND IT IS HEREBY DECLARED that the said trustees or trustee for the time being may in their or his uncontrolled discretion, instead of acting personally, employ or pay a solicitor or any other person to transact any business or do any act of whatever nature required to be done in the premises, including the receipt and payment of money, AND that any trustee of these presents, being a solicitor or other person engaged in any profession or business, may be so employed or act, and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trust, including acts which a trustee could have done personally (*b*); AND ALSO if and whensoever any person being at the time of his death sole trustee for the purposes then unaccomplished for which the said *A* and *B* are hereby made trustees shall have died, the legal personal representative or representatives of that person shall be the trustees or trustee for those purposes, unless and until other trustees for those purposes shall be appointed; AND IT IS HEREBY DECLARED that the power of appointing a new trustee or new trustees of this settlement created by the Conveyancing and Law of Property Act 1881 may be exercised by the said [*intended husband and wife*] during their joint lives, and after the death of one of them by the survivor of them during his or her life, and after the death of such survivor by the continuing trustees or trustee of these presents for the time being, And if there shall not be any continuing trustee then by the refusing or retiring trustees or trustee if any, and if able and willing to exercise this power or otherwise by the acting executors or executor, administrators or administrator of the trustee who alone continuing to be such until his death shall have then last previously died (*c*); PROVIDED ALWAYS that if and whensoever there shall be any persons or person hereby nominated for that purpose as aforesaid able but not willing to exercise the power last hereinbefore referred to, no other person or persons while that shall be the case shall be entitled to exercise that power (*d*). PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*intended wife*] shall survive the said [*intended husband*], and there shall not be more than two children of the said intended marriage who being sons or a son shall live

Power for wife if she survive husband and marry again, and if there be only specified number of children of

(*a*) See note (*a*), above, p. 21; Treatise, 1428.
(*b*) See note (*d*), above, p. 21; *Ib.* 1431.
(*c*) *Ib.* 1357.
(*d*) See note (*a*), above, p. 21.

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intended marriage to revoke trusts of parts of fund (*a*).

to attain the age of twenty-one years or being daughters or a daughter shall live to attain that age or marry, it shall be lawful for the said [*intended wife*] after the death of the said [*intended husband*], and either by one or by several concurrent or successive exercises of this power made by any deed or deeds, writing or writings sealed and delivered by her or by will or codicil, to revoke such of the trusts hereby declared of the trust fund and of the other and after-acquired property (if any) of the said [*intended wife*] as are to take effect after her death, and as shall affect such undivided part or parts of the trust fund and of the said other and after-acquired property (if any) as are hereinafter for that purpose mentioned, (that is to say) If there shall be only one child of the said intended marriage who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry, the same trusts may be so as aforesaid revoked in respect of any undivided part or parts not exceeding two equal undivided third parts of the trust fund and of the other and after-acquired property of the said [*intended wife*] so agreed to be settled as aforesaid, AND if there shall be two such children as last aforesaid then the same trusts may be so as aforesaid revoked in respect of any undivided part or parts not exceeding one equal undivided third part of the trust fund and of the other and after-acquired property of the said [*intended wife*] so agreed to be settled as aforesaid;

And to substitute trusts for after-taken husband and issue by him.

PROVIDED ALWAYS that such revocation as aforesaid shall be effectual only on condition that the said [*intended wife*] shall by the same or some other deed or will or codicil appoint other trusts of the undivided part or parts the trusts whereof shall have been so revoked as aforesaid in substitution for the trusts which shall have been so revoked, and that the said substituted trusts shall be for the benefit of all or some or one of the class of persons constituted by any husband of the said [*intended wife*] and her issue, AND shall not confer on any husband of the said [*intended wife*] any interest other than one during the whole or a part of his life in the yearly produce of the undivided share or undivided shares to which the said substituted trust shall relate;

Restriction of amount subsequent family may take.

PROVIDED ALSO, and it is hereby agreed and declared, that the said substituted trust shall not be such as shall entitle or enable any person or persons by the exercise of any power to entitle any child or the issue of any child of the said [*in-*

(*a*) See shorter form below, p. 123. These clauses will need modification if the clause entitling the issue of sons dying under twenty-one be used (above, p. 111). As to this power, see Treatise 29; *Bond* v *Taylor*, *ib.* 1091.

tended wife] by any subsequent marriage or marriages as aforesaid to take a larger share in amount or value of the trust fund and the said other and after-acquired property under any such appointment as aforesaid than the amount or value of the share or shares to which that child would have been entitled if there had been an equal distribution *per capita* of the whole of the trust fund and of the said other and after-acquired property between the child or children of the said [*intended wife*] by any subsequent marriage or marriages as aforesaid who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, or who shall have issue entitled under the exercise of any such power as last aforesaid, and the child or children of the said [*intended wife*] by the said [*intended husband*] who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry (*a*); AND it is hereby agreed and declared that any such revocation and new appointment as last aforesaid may be made or executed by the said [*intended wife*] under the aforesaid power enabling her in that behalf while it shall be uncertain whether or to what extent the same will be capable of taking effect, and if so made shall take effect according to the event and to the number of the children of the said now intended marriage who being sons or a son shall attain the age of twenty-one years or being daughters or a daughter shall attain that age or marry under that age (*a*); PROVIDED ALWAYS that, subject and without prejudice to any such substituted trust or trusts as may be created by the said [*intended wife*] as aforesaid under or by virtue of the power hereinbefore in that behalf contained, and so far as any such substituted trust or all such substituted trusts if more than one shall not extend, the undivided part or parts of which any such appointment or appointments shall be made as aforesaid shall remain and be held upon such of the rusts and with and subject to such of the powers, provisoes, agreements and declarations herein declared and contained and applicable thereto as shall be subsisting or capable of taking effect (*b*); PROVIDED ALSO, and it is hereby agreed and declared, that if and so often as and at any time or times after any revocation of the trusts hereby declared of the trust fund and of the said other and after-acquired property of the said [*intended*

Exercise of power to operate according to event.

Subject to new trusts, those of this deed to operate.

Trustees may set apart funds to answer substituted trusts.

(*a*) These clauses will need modification if that entitling the issue of sons dying under twenty-one be used (above, p. 111). (*b*) Above, pp. 110—112, 114.

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wife] shall be made by her under the power in that behalf hereinbefore contained, it shall be lawful for the trustees or trustee for the time being of these presents by deed to appropriate and set apart such of the funds then subject to the trusts by these presents or by these presents and by any such declaration of substituted trusts as aforesaid declared as shall in the opinion of the said trustees or trustee for the time being be of equal value with the undivided part or parts of either all or any of the same funds the trusts whereof shall have been so revoked; AND whensoever any such appropriation as last aforesaid shall have been made the funds so appropriated shall thenceforth, so far as shall be necessary in order to give effect to such substituted trusts therein, be discharged from the trusts hereby created, and shall be accepted by the person or persons entitled under such substituted trusts as aforesaid in full satisfaction of the undivided share of all or any of the said trust funds as the case may be in respect of which such appropriation shall have been made, and such appropriation shall be conclusively binding on all persons interested in all or any part of the trust fund and of the said other and after-acquired property or of the money, stock, funds and securities into, in or upon which the same respectively or any parts thereof respectively may be converted or invested, or in the income thereof or of any part thereof; IN WITNESS, etc.

SOME ALTERNATIVE FORMS.

A.

Investment Clauses.

Small class fully described (*a*).

in any of the stocks or funds of the Government of the United Kingdom or upon real securities in England or Wales, but not in or upon stocks, funds or securities of any other description, or upon any real security situate in Scotland or Ireland; and may, etc.

Small class described by reference to the present general law, with exceptions (*b*).

in or upon any of the stocks, funds and securities in or upon which respectively, by the rules of equity and by Acts of Parliament respectively, trustees are authorised to invest trust money; EXCEPT real securities in any part of the United

(*a*) This is in substance the clause which, until about forty years ago, was ordinarily used, but so verbally modified as to preserve it from the enlarging operation of 4 & 5 Will. IV., c. 29, and 22 & 23 Vict., c. 35, s. 32; Treatise, 434-9.

(*b*) The exceptions comprise all the investments the acceptance of which by trustees is authorised by Acts of Parliament, so that the authority given by the

Kingdom, stock of the Bank of England or Ireland (*a*), East India stock (*b*), securities the interest of which is or shall be guaranteed by Parliament (*c*), and consolidated stock of the Metropolitan Board of Works (*d*); and may, etc.

All kinds of investment, including personal security (*e*).

in or upon any stocks, funds, shares or securities whatsoever, including securities of merely personal obligation; and may, etc.

Authority to accept second mortgages and contributory mortgages (*f*).

and whether the same hereditaments shall or shall not when accepted as a security be subject to any prior mortgage or other incumbrance, and whether the security be taken by a separate and distinct mortgage or security made exclusively to or in trust for the said trustees, or by a mortgage or security made to or in trust for them jointly with any other person or persons who may contribute to any loan or loans to be advanced on any such mortgage or security, and although the said trustees may not obtain the whole or any portion of the legal estate of the property therein comprised.

Clause approved by Lord Romilly, M.R. (*g*).

in any of the public stocks or funds or Government securities of the United Kingdom, or at interest upon Government or real securities in England or Wales, or in any other mode of investment in which trustees, executors or administrators are by any Act of Parliament or by the Rules or Orders of the Court of Chancery authorised to invest, or in or upon the debenture stock, debentures, mortgages or securities of any railway company which shall have paid dividends of not less than £2

clause is restricted to that given by the old rule of the Court of Chancery—that is, to invest in stocks of the Government of the United Kingdom only. Omission of the exception or of parts of it will enlarge the scope of the power accordingly.

(*a*) 22 & 23 Vict., c. 35, s. 32.

(*b*) *Ib.*, and 30 & 31 Vict., c. 132, s. 1.

(*c*) *Ib.*, s. 2.

(*d*) 34 & 35 Vict., c. 47, s. 13.

(*e*) Though this form gives the trustee no guidance, and does not impose on him any restriction, it does not absolve him from the duty of exercising the prudence of a man of business.

(*f*) This clause, if used at all, may be inserted in the form printed at p. 109, after the word "Wales." It is not printed for general use. The acts authorised by it are open to grave objections (Treatise, 464). Nevertheless settlors occasionally think fit to give such powers as these to their trustees.

(*g*) This form was inserted by the late Vice-Chancellor Sir Charles Hall while still at the bar in the draft of a settlement made in 1870 on the marriage of a ward of Court, and stated by him to be taken from forms approved by Lord Romilly when Master of the Rolls in settlements made under the direction of the Court. It is printed here, not for use without the modification which the changes made by the Judicature Acts make necessary, but as showing the practice of the Court.

FORMS.

per cent. per annum on its ordinary capital for not less than two years immediately before the time of investment.

Authority to remit money to the Colonies for investment there, and to delegate to agents there the duty of investment.

AND, in addition to the declaration last hereinbefore contained, IT IS HEREBY FURTHER AGREED AND DECLARED that if and whensoever the trustees or trustee for the time being of these presents shall think fit to exercise or to attempt to exercise the power hereinbefore contained of investing trust money upon the security of real estate in any colony or dependency of the United Kingdom it shall be lawful for such trustees or trustee to remit any trust money proposed to be so invested to any agent or agents resident in that colony or dependency, And to delegate to that agent or those agents the trusts for and powers of investment and varying investments and all powers incidental thereto (including the execution of all deeds and instruments) by these presents reposed in the said trustees or trustee for the time being, so far as the same trusts and powers are applicable to the investment of the trust money so remitted or any part thereof on real security within that colony or dependency, to the intent that that agent or those agents may act in and exercise all those trusts and powers with reference to investment and variation of investments as effectually as the said trustees or trustee for the time being could if personally present in such colony or dependency, but so as that every security for such money shall as to the value of the proposed security be taken in the names or name of the said trustees or trustee for the time being; And it shall also be lawful for the said trustees or trustee for the time being to empower and direct the said agent or agents until the money remitted to him or them shall be so invested as aforesaid to deposit the same in some bank in good credit in the same colony or dependency to an account distinct from any other which such agent or agents may have with such bank, and with notice that the same is not the proper money of such agent or agents; AND IT IS HEREBY DECLARED that no trustee of these presents shall become liable for any loss to the trust fund which may be caused by any act or default of any such agent or agents as aforesaid, or by the failure of any such bank as aforesaid.

B.

Power if Settlor survive and marry again, there being only one Child, to withdraw Moiety of Fund (a).

PROVIDED ALWAYS, and it is hereby agreed and declared, that if there shall be only one child of the said intended marriage who either being male shall attain the age of twenty-one years or being female shall attain that age or marry, and if the said [*intended wife*] shall survive the said [*intended husband*] and marry again, it shall be lawful for the said [*intended wife*], by any deed or deeds, writing or writings sealed and delivered (but without prejudice to any previous exercise of any of the powers hereinbefore contained), to vary or revoke all or any of the trusts and powers hereinafter contained of and concerning the " Fund" and the yearly produce thereof respectively to the extent of one undivided moiety of the " Fund" and of the yearly produce thereof, and by the same or any other deed or deeds, writing or writings, to declare any new or other trusts or powers of and concerning the premises the trusts whereof shall be so varied or revoked as aforesaid; PROVIDED ALWAYS that if the contingency of there not being more than one such child of the said intended marriage as last aforesaid shall ultimately occur, any revocation of trust purporting to be made in exercise of the power of revocation hereinbefore contained shall, if in other respects authorised by that power, be effectual, although at the date of the said revocation the said contingency shall not have already occurred; PROVIDED ALSO that the said powers of revocation and new appointment may be repeatedly exercised, but not so as by both or all the exercises thereof to affect in the aggregate more than half of the " Fund."

(*a*) See a more elaborate form above, p. 117. If the clause (above, p. 111) entitling the issue of sons dying under twenty-one be used, this form may need modification.

XVIII.

SETTLEMENT ON MARRIAGE *of* PORTIONS *assigned by Deed of Even Date* (*a*) *and* SUMS *of* STOCK *both belonging to the intended* WIFE, *and* LIFE POLICY (*b*) *settled by intended* HUSBAND. *Trusts of Policy declared by Reference.*

Parties (*c*). THIS INDENTURE, made the day of , 188 , BETWEEN [*intended husband*] of the first part, [*intended wife*] Recitals (*c*). of the second part, and [*trustees*] of the third part; [*Recitals of intended marriage* (above, p. 108) *and of deeds and events by means of which the intended wife is entitled to the sum of* £2000, *to be raised by the trustees of a term of* 1000 *years limited in certain hereditaments.*] AND WHEREAS the —of wife's title to New £3 per cents, said [*intended wife*] is entitled to the sum of £ New £3 per centum Annuities; AND WHEREAS by a policy of —of husband's title to life policy, assurance effected with the Assurance Society, bearing date the day of and numbered , the sum of £ is assured to be paid to the executors, administrators or assigns of the said [*intended husband*] within such a short period after his death as is in the said policy mentioned, subject nevertheless to the payment by the said [*intended husband*] or his assigns during his life of the yearly premium of £ and to the stipulations in the said policy contained —of agreement for settlement, or referred to; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said sums of £2000 sterling and £ New £3 per centum Annuities, and the interest and dividends now due and henceforth to become due in respect of the same sums respectively, should be respectively assigned and transferred by the said [*intended wife*] in the manner and upon the trusts hereinafter respectively referred to and expressed concerning the same; AND THAT the said sum of £ and all other money which is assured or may become payable by virtue of the said policy of

(*a*) As to the method of settling portions, see Treatise. 295 ; and see precedent of assignment below, p. .

(*b*) As to settlements of life policies, see Treatise, 305—320.

(*c*) As to parties and recitals, *ib.* 278—284.

assurance to which the said [*intended husband*] is so entitled as aforesaid should be settled upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed or referred to concerning the same; AND WHEREAS in pursuance of the said agreement in that behalf, and by an indenture bearing even date with but executed before these presents and expressed to be made between the same persons as parties thereto as are parties to these presents and in the same order, the said [*intended wife*] with the approbation of the said [*intended husband*] has assigned and conveyed unto the said [*trustees*] the said sum of £2000, and the interest now due and henceforth to become due for the same, TO HOLD unto the said [*trustees*], their executors, administrators and assigns, in trust for the said [*intended wife*], her executors and administrators, until the said intended marriage shall be solemnised, and after the solemnisation thereof upon such trusts and with and subject to such powers, provisoes, agreements and declarations as are or shall be expressed concerning the same sums and interest by an indenture therein described and referred to as already prepared, meaning these presents; AND WHEREAS in pursuance of the said agreement in that behalf the said [*intended wife*] has with the approbation of the said [*intended husband*] transferred the said sum of £ New £3 per cent. Annuities in the books of the Governor and Company of the Bank of England into the joint names of the said [*trustees*]: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*intended wife*] with the approbation of the said [*intended husband*] doth hereby direct and declare that the said [*trustees*] shall stand possessed of the said sum of £2000 sterling and the said sum of £ New £3 per cent. Annuities, IN TRUST for the said [*intended wife*] until the said intended marriage shall be solemnised, And from and after the solemnisation thereof shall either permit the said sums of £2000 sterling and £ New £3 per centum Annuities to remain on the present securities for the same and in the present modes of investment thereof respectively, or shall at any time or times, with the consent of the said [*intended husband and wife*] during their joint lives or of the survivor of them during his or her life, and after the death of such survivor at the discretion of the trustees or trustee of these presents for the time being, call in and

PRECED. XVIII.

—of assignment of wife's portion,

—of transfer of New £3 per cents.

Declaration of trust of wife's fortune

for her till marriage,

then for investment.

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compel payment of the said sum of £2000 or any part or parts thereof, and sell the sum of New £3 per centum Annuities or any part or parts thereof, and shall with such consent or at such discretion as aforesaid invest the money which shall be received or produced upon or by every such calling in and compelling payment and sale as aforesaid in the names or name of the said trustees or trustee for the time being in [*investment clause and power to vary investments*, p. 109]; AND SHALL during the life of the said [*intended wife*] pay the yearly produce of the said trust money, stocks, funds, shares and securities to the said [*intended wife*] for her sole and separate use without power of anticipation (*a*); AND SHALL after the death of the said [*intended wife*], if the said [*intended husband*] shall survive her, pay the said yearly produce to the said [*intended husband*] and his assigns during his life; AND SHALL after the death of the survivor of them the said [*intended husband and wife*] stand and be possessed of and interested in the said trust money, stocks, funds, shares and securities, and the subsequent interest, dividends and produce thereof: [*Trusts for issue of marriage subject to appointment, hotchpot and advancement clauses, and trusts of capital in default of issue*, above, pp. 110—112.]

Income to wife for life,

Then to husband for life,

Then capital for issue.

Assignment of policy.

AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*intended husband*] as beneficial owner (*b*) and with the privity of the said [*intended wife*] doth hereby assign and convey unto the said [*trustees*], their executors, administrators and assigns, ALL THAT policy of assurance hereinbefore mentioned, and as well the said sum of £ as all bonuses, additions and sums of money assured or at any time hereafter to become payable by virtue of the same policy, and the full benefit thereof,

To hold

TO HAVE AND TO HOLD the said policy money and all other the premises hereinbefore expressed to be hereby assigned unto the said [*trustees*], their executors, administrators and assigns, IN TRUST for the said [*intended husband*], his executors, administrators and assigns until the intended marriage shall be solemnised, AND after the solemnisation thereof upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same; AND IT IS HEREBY AGREED AND

In trust for husband till marriage,

Then

(*a*) As to trusts for separate use, see Treatise, 747—856; words of creation, *ib.* 754; restraint on anticipation, *ib.* 826—843.

(*b*) *Ib.* 320, 324.

DECLARED that after the solemnisation of the said intended marriage the said [*trustees*] and the survivor of them shall stand possessed of and be interested in the said policy sum of £ and all money assured or to become payable to the said trustees or trustee for the time being by virtue of the said policy, UPON TRUST that the said [*trustees*] or the survivor of them shall upon the death of the said [*intended husband*] apply for and receive and if necessary compel payment to them or him by the said Society of the said sum of £ , and then or whensoever sooner the same or any part thereof shall become payable all other money which shall become payable by virtue of the said policy; AND SHALL stand and be possessed of and interested in the money which shall be received in respect of the said policy, UPON SUCH OF THE TRUSTS and with and subject to such of the powers, provisoes, agreements and declarations hereinbefore expressed concerning the money to arise from the calling in of the said sum of £2000 sterling and the sale of the said sum of £ New £3 per centum Annuities and the conversion of the stocks, funds, shares and securities in or upon which such money may be invested, and of the yearly produce thereof respectively, as having regard to the deaths of parties and other circumstances shall be capable of being applied to and exercised in respect of the fund the trusts whereof are now being declared; SAVE AND EXCEPT that if there shall be no issue of the said intended marriage in whom the whole of the same fund shall become absolutely vested, Then subject and without prejudice to the trusts thereof to take effect during the life of the said [*intended wife*] hereinbefore by reference declared, And after her death and such default or failure of issue as aforesaid, which shall last happen, the said trustees or trustee for the time being shall stand possessed of the said trust fund whereof trusts are now being declared, and the interest, dividends and yearly produce thereof, or so much thereof respectively as shall not have become vested or have been applied either under any of the trusts or powers herein contained, or under any statutory power, IN TRUST for the said [*intended husband*], his executors, administrators and assigns; AND the said [*intended husband*] doth hereby covenant with the said [*trustees*] that if the said intended marriage shall be solemnised the said [*intended husband*] will not do or suffer anything whereby the policy hereby

In trust on death of husband to receive policy money,

and hold it

Upon trusts declared of wife's fortune.

Except that in default of issue there shall be

Ultimate trust for husband(*a*).

Covenants by husband (*b*) not to impair policy,

(*a*) Treatise, 1242. (*b*) *Ib.* 312.

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assigned may become void or voidable, AND WILL punctually pay the annual premiums and other money (if any) necessary for keeping on foot the said policy hereby assigned, or any policies or policy which shall have been effected as hereinafter provided, or for restoring the same respectively if the same respectively shall have become voidable; AND in case the policy hereby assigned, or any policy or policies effected as hereinafter provided, shall become void, will effect a new policy or new policies of assurance, with such office or offices as the said trustees or trustee for the time being shall direct, and in their or his names or name, on the life of the said [*intended husband*] in such sum or sums of money as shall be or amount to the sum which would have been payable under the policy or policies which shall have become void if the said [*intended husband*] had then died; AND will deliver every such future policy and the receipt for every such payment as aforesaid to the said trustees or trustee for the time being; AND will not do or suffer anything whereby the said trustees or trustee for the time being may be prevented from recovering or receiving any of the money intended to be assured by the said policy hereby assigned or by any such future policy as aforesaid; AND IT IS HEREBY DECLARED that every new policy which shall be so effected as aforesaid, and the money whereof payment shall be thereby assured, shall be held upon the trusts and with and subject to the powers, provisoes, agreements and declarations herein expressed concerning the policy hereby assigned and the money payment whereof is thereby assured; PROVIDED ALWAYS, and it is hereby also agreed and declared, that the said trustees or trustee for the time being may, if they or he shall in their or his absolute discretion think fit, from time to time apply any part of the yearly produce, or if that shall be insufficient then any part of the capital of any of the said trust funds, in or towards payment of the annual premium or

—to pay premiums,

—to effect new policies instead of void ones.

—and not to hindertrustees from receiving money.

New policies to be on trusts of original one.

Power to apply income or capital in payment of premiums (*a*).

(*a*) The propriety of inserting this power is not a matter of course, but one for consideration in every case. If, however, the trustees are not enabled to keep the policy in force, it may be expedient to empower them to sell or surrender it. For that purpose the following form may be used: "PROVIDED ALWAYS, and it is hereby also agreed and declared, that if at any time after the said intended marriage and during the life of the said [*intended husband*] the said trustees or trustee for the time being shall think it expedient so to do, they or he may sell or dispose of the said policy hereby assigned or any such future and then subsisting policy or policies as aforesaid to the company or companies who shall have granted the same respectively, or to any other company or companies or person or persons; And in

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other the money necessary for keeping in force or restoring the said policies of assurance or any of them; And that the said [*intended husband*], his heirs, executors or administrators will or shall on demand pay to the said trustees or trustee for the time being all such money as shall have been paid by them or him in or towards payment of the said premium or premiums or money necessary for keeping in force or restoring the said policies or any of them, And that the said trustees or trustee for the time being shall hold and apply the money so repaid to them or him as last aforesaid upon the trusts and in the manner upon and in which the money in repayment whereof the same shall have been repaid ought then to be held and applied; Provided also, and it is hereby agreed and declared, that it shall not be obligatory on the said trustees or trustee to enforce any of the covenants hereinbefore contained in relation to the said policies or any of them, or to apply any of the said yearly produce or capital in payment of the annual premiums or sums of money necessary for keeping in force or restoring the same or any of them, or to see to the said policies or any of them being kept in force, and that no omission or neglect so to do by the said trustees or trustee for the time being shall be chargeable as a breach of trust, and that no trustee of these presents, nor the executors or administrators of any trustee of these presents, shall be answerable for any of the said policies becoming void through any means whatsoever; Provided always, and it is hereby agreed and declared, that if at any time or times hereafter, in the execution of any of the trusts or provisions of the present indenture, it shall become necessary to divide or apportion between several persons the trust funds hereinbefore mentioned or any part thereof respectively, and the trust money, stocks, funds or securities of which the said trust funds respectively or any part thereof respectively

Exoneration of trustees (*a*).

Power to apportion blended funds (*b*).

the event of and after any and every such sale or disposition as aforesaid, the said trustees or trustee for the time being, although the said [*intended husband*] shall be still living, shall stand possessed of the net money produced by the same sale or disposition upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinbefore expressly or by reference declared concerning the money assured by the policy or policies so sold or disposed of, and to take effect after the death of the said [*intended husband*] and as if he were not living."

(*a*) Treatise, 316, 1429. (*b*) *Ib.* 1419.

PRECED. XVIII. shall then consist shall be so blended together that it shall be doubtful which part or parts thereof shall have been produced by or substituted for all or any part of each or any of the said original trust funds, then and in every such case it shall be lawful for the said trustees or trustee for the time being, and (if requested so to do by any person or persons interested) the same trustees or trustee are and is required to divide or apportion and distribute such trust money, stocks, funds and securities between the several persons entitled thereto in such manner as the same trustees or trustee shall deem just and reasonable according to the rights and interests of the same parties respectively therein, and the division or apportionment and distribution so to be made shall be as binding and conclusive on all persons claiming or to claim any interest in the premises as if the same had been made by a decree of a Court of competent jurisdiction in an action duly instituted for the purpose of obtaining such a division or apportionment and distribution (*Trustee Clauses, above,* pp. 116, 117). IN WITNESS, etc.

Other clauses for use in Settlements of Policies in substitution for or in addition to those contained in Precedent XVIII.

Recital of policy effected by husband in names of trustees.

AND WHEREAS, in pursuance of an agreement in that behalf entered into on the treaty for the said intended marriage, the said [*intended husband*] has effected with the Corporation [*or* Company *or* Society] a policy of assurance bearing date the day of , and numbered , whereby the sum of £3000 is assured to be paid by the said Corporation [*or* Company *or* Society] to the said [*trustees*], their executors, administrators or assigns, within such a short period after proof of the death of the said [*intended husband*] as in the said policy mentioned, Subject nevertheless to the payment to the said Corporation [*or* Company *or* Society] during the life of the said [*intended husband*] of the yearly premium of £ , and to the stipulations in the said policy contained or referred to, to the intent that the said policy and the money to become payable by the said Corporation [*or* Company *or* Society] by virtue thereof may be held upon the trusts and with and subject to the powers, provisoes, declarations and agreements hereinafter expressed concerning the same; NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and in consideration

Declaration of trust

of the said intended marriage, it is hereby agreed and declared by the parties hereto that the trustees or trustee of these presents for the time being do and shall stand possessed of and be interested in the said policy and the said sum of £3000, and all bonuses, additions and other money which shall hereafter become payable by the said Corporation [*or* Company *or* Society] or their assigns by virtue of the said policy, and all the benefit thereof respectively, IN TRUST for the said [*intended husband*], his executors, administrators and assigns, until the said intended marriage shall be solemnised, and from and after the solemnisation thereof UPON THE TRUSTS and with and subject to the powers, agreements and declarations hereinafter expressed concerning the same, (that is to say) UPON trust that the said trustees or trustee for the time being shall after the death of the said [*intended husband*] apply for and if necessary compel payment by and receive from the said Corporation [*or* Company *or* Society] the said sum of £3000, and all other money which shall have become payable by virtue of the said policy; AND upon further trust that the said trustees or trustee for the time being, with the consent of the said [*intended wife*] during her life, and after her death at the discretion of the said trustees or trustee for the time being, SHALL INVEST the said sum of £3000 and all other money so to be received as last aforesaid in the names or name of the said trustees or trustee for the time being [*Investment clause and power to vary investments*, above, p. 109]; AND shall pay the interest, dividends and yearly produce of the said sum of £3000, and other money so to be received by virtue of the said policy as aforesaid, and of the stocks, funds, shares and securities in or upon which the same may from time to time be invested, to the said [*intended wife*] during her life for her sole and separate use, but without power of anticipation; AND SHALL, after the death of the said [*intended wife*], stand possessed of the said sum of £3000 and other money, stocks, funds, shares and securities, and the yearly produce thereof, IN TRUST [*Trust for issue subject to appointment as above*, p. 110; *Hotchpot and advancement clauses*, p. 111, *and in default of issue, trust for husband*, p. 127]; PROVIDED ALWAYS, and it is hereby agreed and declared, that the said trustees or trustee for the time being shall at the request in writing of the said [*intended husband*] apply every or any bonus which may hereafter be declared in respect of any of the said policies, or permit or direct as the case may require

for husband till marriage,

and afterwards

Upon trust at husband's death to receive money,

and invest

and pay income to wife for life,

and then capital for issue.

Provision for acceptance of reduction of premium instead of bonus.

FORMS.

the same bonus to be applied, in reduction of the annual premium or other the money necessary for keeping in force or restoring the policy in respect of which such bonus shall be declared.

An Alternative to the preceding Proviso.

Power to accept instead of future bonus either reduction of premium or a present payment.

PROVIDED ALSO that if and whensoever the said trustees or trustee for the time being shall become entitled by virtue of the said policy and the constitution and acts of the said Corporation [*or* Company *or* Society] or of some or one of the said means to a share in the profits of the said Corporation [*or* Company *or* Society] in addition to the said sum of £3000, and also entitled to accept the benefit of the said share either in the form of an additional sum to be paid after the death of the said [*intended husband*] or in that of a partial or total relief from the obligation of paying subsequent premiums for the purpose of keeping the said policy on foot, or in that of a sum of money to be at the time of becoming so entitled as last aforesaid or soon thereafter paid by the said Corporation [*or* Company *or* Society] to the said trustees or trustee for the time being, it shall be lawful for them or him, with the consent of the said [*intended wife*] during her life, and afterwards at their or his discretion [*or* "it shall be obligatory on them or him upon the direction in writing of the said (*intended husband*)"], to accept instead of such additional sum to be paid after the death of the said [*intended husband*] as aforesaid, either such a diminution or extinction of the amount of the yearly premium to be subsequently payable as aforesaid, or such a payment of a sum of money to be then immediately or soon thereafter paid as aforesaid, as the said trustees or trustee for the time being shall think more expedient [*or* "as the said (*intended husband*) shall direct"].

Trust of sum paid presently.

PROVIDED ALSO that if any sum or sums of money shall, under the power [*or* direction] last hereinbefore contained be received in the lifetime of the said [*intended husband*], then the said trustees or trustee for the time being shall stand possessed of every such sum, and the stocks, funds, shares and securities in or upon which the same shall be invested, upon the trusts and with and subject to the powers hereinbefore declared and expressed concerning the said sum of £3000 and the stocks, funds, shares and securities in or upon which the same shall be invested, and the interest, dividends and income thereof respectively which are intended to take effect after the death of the said [*intended husband*].

Power for husband to redeem policy.

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*intended husband*] shall at any time during his life pay to the said trustees or trustee for the time being the sum of £ , then after such payment shall have been made the said trustees or trustee for the time being shall stand possessed of the aforesaid policy, and all money, including bonuses, to become payable by virtue thereof, IN TRUST for the said [*intended husband*], his executors, administrators and assigns; AND SHALL stand possessed of the sum of £ , if the same shall be so paid by the said [*intended husband*] as aforesaid, and the stocks, funds, shares or securities in or upon which the same may be invested, and the interest, dividends and yearly produce thereof, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinbefore declared and contained concerning the money to arise from the sale, calling in and conversion into money of [*description of fund referred to*] or any part thereof, and the stocks, funds, shares or securities in or upon which that money may be invested, and the interest, dividends and yearly produce thereof, or as near thereto as the deaths of parties and other circumstances will admit.

Trust of redemption money.

XIX.

SETTLEMENT ON MARRIAGE *of* MONEY *produced by Sale of* REAL ESTATE *of the Intended* HUSBAND *conveyed by Deed of even date* (*a*).

Parties (*b*).

THIS INDENTURE, made the day of 18 , BETWEEN [*intended husband*] of the first part, [*intended wife*] of the second part, and [*trustees*] of the third part:

Recitals (*b*) of intent to marry,

WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and the said [*intended wife*];

—agreement to convey,

AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*intended husband*] should convey the hereditaments hereinafter stated to have been conveyed by him to the uses, upon the trusts and with and subject to the powers, provisoes, agreements and declarations to, upon, with and subject to which the said hereditaments are hereinafter stated to have been conveyed;

—conveyance on trusts for sale (*c*).

AND WHEREAS by an indenture bearing even date with but executed before these presents, and expressed to be made between the said [*intended husband*] of the first part, the said [*intended wife*] of the second part, and the said

(*a*) For the reasons for using two deeds on the occasion of settling money to be produced by sale of land, see Treatise, 290—294. The money produced by sale of the land when sold and the rents till sale will be received by the trustees of the conveyance upon trust for sale; but the trusts upon which that money and those rents are to be held are to be performed by the trustees of this settlement. If originally the same persons were not it would be necessary, and if it were likely that subsequently from time to time the same persons would not be trustees of both deeds it might be advisable, to insert in the conveyance upon trust for sale a direction to the trustees of it to pay over to the trustees of the settlement the rents and profits till sale and upon sale the money produced thereby, to be applied by them upon the trusts declared by the settlement. As, however, it is the proper practice, and one never departed from except by an ignorant blunder, to vest the trusteeship of both deeds originally, and so long as the trusts of them endure to keep it in the same persons—in which case a direction to the trustees of one deed to pay to those of the other is not only superfluous but inapt—there seems no sufficient reason for departing from what I apprehend to be the usual practice of declaring in the settlement that the trustees of it shall apply the money in a specified manner, although they will have acquired possession of that money in their capacity of trustees of the conveyance of the trust for sale. In the event, if in consequence of such a blunder as is above referred to it should happen, of one set of persons becoming trustees of one deed and another set at the same time trustees of the other, no serious ill consequence would, it is apprehended, follow from what would, with reference to the case so constituted, be an inadequate expression of the requisite trusts.

(*b*) As to parties and recitals, see Treatise, 278—284. (*c*) Below, p. 166.

[*trustees*] of the third part, it has been witnessed that in pursuance of the said agreement the said [*intended husband*], with the approbation of the said [*intended wife*], hath granted and conveyed unto the said [*trustees*] and their heirs the messuages, farm, land and hereditaments situate in the parish of in the county of which are particularly described in the schedule thereunder written, with their appurtenances, to hold unto the said [*trustees*] and their heirs to the use of the said [*intended husband*], his heirs and assigns, until the said intended marriage shall be solemnised, And from and after the solemnisation thereof to the use of the said [*trustees*], their heirs and assigns for ever, Upon the trusts and with and subject to the powers, provisoes, agreements and declarations thereinafter expressed concerning the same, (that is to say) upon trust that the trustees or trustee of the indenture now in recital for the time being shall at such times or time during the lives of the said [*intended husband*] and [*intended wife*] or the life of the survivor of them, as they, he or she shall in writing direct, And after the death of the survivor of the said [*intended husband*] and [*intended wife*] at such time or times as the trustees or trustee for the time being of the indenture now in recital shall in their or his discretion think fit, sell the hereditaments by that indenture expressed to be granted and conveyed as aforesaid, AND by the said indenture it has also been agreed and declared that the said trustees or trustee for the time being shall stand and be possessed of and interested in the clear residue of the money produced by any such sale or sales as aforesaid which shall remain after payment of the expenses of the said sale or sales, And also of and in the rents and profits of the said hereditaments expressed to be thereby granted until the same shall be so sold, upon such trusts and with and subject to such powers, provisoes, agreements and declarations as are or shall be expressed concerning the same respectively by an indenture therein described and referred to as already engrossed, and being these presents; NOW THIS INDENTURE WITNESSETH that in further pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared that from and after the solemnisation of the said intended marriage the trustees or trustee of these presents for the time being shall, with the consent of the said [*intended husband*] and the said [*intended wife*] during their joint lives

Declaration of trusts of sale money,

PRECED. XIX.

and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the last-mentioned trustees or trustee for the time being, invest the said clear residue of the money which shall be produced by the sale under the said trust for sale in the hereinbefore-recited indenture contained of all or any of the said hereditaments expressed to be thereby granted as aforesaid, as and when the same money shall be received, in the names or name of the last-mentioned trustees or trustee for the time being [*add investment clause and power to alter and vary*, p. 109]; AND SHALL pay the interest, dividends and yearly produce of the said clear residue, and of the stocks, funds, shares and securities into or upon which the same shall for the time being be invested (which clear residue, stocks, funds, shares and securities are hereinafter called the trust fund), to the said [*intended husband*] and his assigns during his life; AND SHALL after the death of the said [*intended husband*] if the said [*intended wife*] shall survive him pay the said interest, dividends and yearly produce to the said [*intended wife*] during her life, for her sole and separate use, yet so that during both her said intended and every if any subsequent coverture she shall not have power to anticipate or alienate all or any part of the said interest, dividends and yearly produce (*b*); AND AFTER the death of the survivor of the said [*intended husband and wife*] the last-mentioned trustees or trustee for the time being shall stand possessed of the trust fund and the yearly produce thereof [*add trusts for issue subject to appointment, and hotchpot and advancement clauses*, above, p. 110]. AND IT IS HEREBY AGREED AND DECLARED that if there shall not be any child of the said intended marriage who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry under that age, then, subject to and after the determination or failure of the trusts hereinbefore declared, the last-mentioned trustees or trustee for the time being shall stand possessed of the trust fund and the yearly produce thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers hereinbefore contained or under any statutory power, IN TRUST for the said [*intended husband*], his executors,

for investment,

Payment of income to husband for life (*a*),

—to wife for life,

then capital for issue.

In default of issue (*c*).

(*a*) As to nature and order of life interests, see Treatise, 857.
(*b*) As to trusts for separate use, *ib.* 747—856; as to restraint on anticipation, *ib.* 826.
(*c*) *Ib.* 1241, 1242.

Trust of rents and profits till sale.

administrators and assigns absolutely; AND IT IS HEREBY AGREED AND DECLARED that until the said hereditaments by the said indenture of even date herewith expressed to be granted as aforesaid shall be sold and disposed of in pursuance of the trusts therein contained the trustees or trustee for the time being of these presents shall out of the rents and profits of the said hereditaments, or those of them for the time being remaining unsold, pay such rates, taxes, expenses of insurance, repair and management or other expenses, as the last-mentioned trustees or trustee for the time being shall think it necessary or expedient to pay, and shall pay and apply the residue of the said rents and profits to the person or persons and in the manner to whom or in which the interest or yearly produce of the money to arise from the sale of the said hereditaments and of the investments thereof would for the time being be payable or applicable under the trusts hereinbefore declared in case such sale had then actually been made [*Add trustee clauses*, above, p. 116].

XX.

MARRIAGE SETTLEMENT *of* MONEY *to be produced by* SALE OF HEREDITAMENTS *of* HUSBAND *conveyed by Deed of even date, and of* MONEY *to be received on* POLICY *on his Life—also of* MONEY *to be produced by* SALE *of* WIFE'S HEREDITAMENTS *conveyed by Deed of even date, and of her* FURNITURE (*a*).

Parties (*b*). THIS INDENTURE, made the day of , BETWEEN [*intended husband*] of the first part, [*intended wife*] of the second part, and [*trustees*] of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*intended husband*] should convey the undivided shares of hereditaments and hereditaments hereinafter stated to have been conveyed by him to the said [*trustees*] and their heirs and to the uses to and upon the trusts upon which the said undivided shares and hereditaments are hereinafter stated to have been conveyed, And that the said [*intended husband*] should assign to the said [*trustees*] the policy of assurance on the life of the said [*intended husband*] which is hereinafter expressed to be assigned by him, and should declare or concur in declaring the trusts thereof hereinafter expressed to be declared, and should enter into the covenants hereinafter expressed to be entered into by him; AND WHEREAS upon the treaty for the said intended marriage it was also agreed that the said [*intended wife*] should convey the messuages and hereditaments hereinafter stated to have been conveyed by her unto and to the use of the said [*trustees*] and their heirs upon the trusts upon which the said messuages and hereditaments are hereinafter stated to have been conveyed, And that the said [*intended wife*] should assign to the said [*trustees*] the furniture and other chattels which are hereinafter expressed to be assigned by her, and that the said [*intended wife*] should declare or concur in declaring

Recitals (*b*) of intended marriage,

— of agreement that husband should convey land,

and assign policy;

and that wife should convey land,

and assign furniture,

(*a*) As to settlements of chattels, see Treatise, 297—299, 1327.
(*b*) As to parties and recitals, *ib.* 278—284.

the trusts thereof hereinafter expressed to be declared, and should enter into the covenants hereinafter expressed to be entered into by her; [*Recital of conveyance of hereditaments by husband and wife upon trusts for sale:* see below, p. 166.] —of conveyance of land(*a*).

NOW THIS INDENTURE WITNESSETH [*continue assignment of policy, etc., habendum, and trust till marriage,* above, p. 126] Assignment, etc., of policy. And after the solemnisation thereof upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter declared and contained concerning the same; AND IT IS HEREBY AGREED AND DECLARED that the trustees and trustee of these presents for the time being shall stand and be possessed of and interested in as well the said clear residue of the money to arise under the said trust in the hereinbefore-recited indenture of even date herewith contained for sale of the said undivided shares and hereditaments thereby granted by the said [*intended husband*] as aforesaid as of the said sum of £ and all other money assured or which may be received in respect of the said policy hereinbefore expressed to be hereby assigned, UPON TRUST that the last-mentioned trustees or trustee for the time being shall, during the joint lives of the said [*intended husband and wife*] with their consent, and after the death of one of them and during the life of the survivor with the consent of that survivor, and after the death of such survivor at the discretion of the last-mentioned trustees or trustee for the time being, invest [*add investment clause and power to alter and vary,* p. 109]; AND SHALL during the life of the said [*intended husband*] pay the yearly produce of the said trust money, or of so much thereof as shall have been received by the trustees or trustee for the time being of these presents, and of the stocks, funds, shares and securities in or upon which the same money may have been invested (hereinafter called the R. fund) to or permit the same to be received by the said [*intended husband*] and his assigns; AND after the death of the said [*intended husband*] if the said [*intended wife*] shall survive him pay the yearly produce of the R. fund to or permit the same to be received by the said [*intended wife*], but so only as that the same shall be for her separate use without power of anticipation, as well during the said intended as during any future coverture;

Trust of proceeds of sale of husband's land and of policy money,

for investment.

Yearly produce to husband for life (*b*),

—to wife for life.

(*a*) On the occasion of the settlement from which this precedent is taken the husband's and wife's land were conveyed by one deed. In most cases it would be desirable to convey them by separate deeds keeping the titles distinct.

(*b*) As to nature and order of life interests, see Treatise, 857.

PRECEDENT XX.

Capital for issue.

AND from and after the death of the survivor of them the said [*intended husband*] and [*intended wife*] the last-mentioned trustees or trustee for the time being shall stand and be possessed of and interested in the R. fund and the subsequently accruing income thereof, IN TRUST [*add trusts for issue, subject to appointment, hotchpot and advancement clauses*, pp. 110—112, *and trust in default of issue for husband*, p. 127]:

Trust of proceeds of sale of wife's land,

AND THIS INDENTURE ALSO WITNESSETH, and it is hereby further agreed and declared, that the last-mentioned trustees and trustee for the time being shall with the consent of the said [*intended husband and wife*] during their joint lives, and the consent of the survivor of them during his or her life, and after the death of such survivor at the discretion of the last-mentioned trustees or trustee for the time being, invest the

or investment by reference (*a*).

said clear residue of the money to arise under the said trust in the hereinbefore-recited indenture of even date herewith contained for sale of the said hereditaments expressed to be thereby granted by the said [*intended wife*] as aforesaid, as and when the same money shall be received in the names or name of the last-mentioned trustees or trustee for the time being in or upon one or some of the stocks, funds, shares or securities in or upon which the money to be produced by sale of the said shares of hereditaments and hereditaments hereinbefore mentioned to have been conveyed by the said [*intended husband*] and the money to be received in respect of the said policy expressed to be hereby assigned is hereinbefore

Power to vary (*b*).

directed to be invested; AND may with such consent or at such discretion as aforesaid from time to time alter and vary the last-mentioned investments for others of the kinds above described; AND SHALL stand and be possessed of and interested in the last-mentioned clear residue, and the stocks, funds, shares and securities in or upon which the same may from time to time be invested (which last-mentioned money, stocks, funds, shares and securities are hereinafter called the L. Fund), and the yearly produce thereof, UPON THE TRUSTS, and with and subject to the powers, provisoes and declarations hereinafter expressed or referred to concerning the same, (that is to say)

Yearly produce for wife for life (*c*),

Upon trust that the last-mentioned trustees or trustee for the time being shall during the life of the said [*intended wife*] pay the yearly produce of the L. Fund to the said [*intended*

(*a*) As to trusts by reference, see Treatise, 1301.
(*b*) *Ib.* 424, 487.
(*c*) As to nature and order of life interests, *ib.* 857.

wife] for her sole and separate use without power of anticipation; And after the death of the said [*intended wife*] shall, if the said [*intended husband*] shall survive her and shall not have done or attempted to do or have suffered anything whereby the yearly produce of the L. Fund or any part thereof would through his act or default, or by operation or process of law or otherwise, except in consequence of his consent to any exercise or exercises of the power of advancement herein contained, if belonging absolutely to him, have become forfeited to (*b*) or vested in or payable to some other person or persons, pay the same yearly produce to the said [*intended husband*] during his life or until he shall do or attempt to do or shall suffer something whereby the same or some part thereof would through his act or default or by operation or process of law or otherwise, except as aforesaid, if belonging absolutely to him, become forfeited to, vested in or payable to some other person or persons, AND after the death of the said [*intended wife*] and the failure or determination of the trust hereinbefore declared of the last-mentioned dividends, interest and yearly produce in favour of the said [*intended husband*], if the same failure or determination shall happen in his lifetime, the last-mentioned trustees or trustee for the time being shall, from time to time, if they or he shall in their or his absolute discretion think fit, but not otherwise, pay and apply those dividends, interest and yearly produce or any part thereof in their or his discretion as the same shall become payable and without anticipation for or towards the maintenance and personal support of the said [*intended husband*] and the child or children and other issue for the time being in existence of the said intended marriage, or at the discretion of the same trustees or trustee for or towards the maintenance and personal support of such one or more to the exclusion of the others or other of such objects of the present discretionary trust or power in such manner, and if more than one in such shares and proportions, as the same trustees or trustee shall think proper during the remainder of the life of the said [*intended husband*] or during such shorter period as the last-mentioned trustees or trustee for the time being in their or his absolute discretion shall think proper; PROVIDED ALWAYS, and it is hereby agreed and declared, that if at any time or times during which the discretionary

PRECEDENT XX. —for husband till bankruptcy (*a*).

Discretionary trust of yearly produce after husband's forfeiture.

(*a*) As to forfeiture on and discretionary trust after bankruptcy, see Treatise, 947—974.

(*b*) *Ib.* 959.

PRECEDENT XX.

trust last hereinbefore contained shall be capable of being performed the said [*intended husband*] shall have a wife whom he shall have married after the death of the said [*intended wife*] it shall be lawful for the last-mentioned trustees or trustee for the time being, if they or he shall in their or his discretion think fit so to do, to exercise the said discretionary trust notwithstanding that that future wife of the said [*intended husband*] or any issue of that future marriage may participate in the benefit of its exercise (*a*);

After determination of discretionary trusts (*b*).

AND IT IS HEREBY FURTHER DECLARED that after the death of the said [*intended wife*] and the failure or determination of the trust of the yearly produce of the L. fund hereinbefore declared for the benefit of the said [*intended husband*], and subject to the discretionary trust or power hereinbefore given to the last-mentioned trustees or trustee for the time being over the last-mentioned yearly produce and to every and any exercise of that discretionary trust or power, the last-mentioned trustees or trustee for the time being shall stand and be possessed of and interested in the L. Fund and the yearly produce thereof, including and treating as capital yearly produce applicable but not applied under the said discretionary trust,

Trusts by reference to those of husband's money (*c*),

Upon and for the same or the like trusts and with and subject to the same or the like powers, provisoes, agreements and declarations as are hereinbefore expressed concerning the R. Fund and the yearly produce thereof, and are intended to take effect after the death of the survivor of the said [*intended husband*] and [*intended wife*],

Except in default of issue.

EXCEPT that in case there shall not be any issue of the said intended marriage who by virtue of any appointment made under either of the powers in that behalf hereinbefore contained, or by virtue of the trusts to take effect in default of such appointment hereinbefore contained, shall acquire a vested indefeasible interest in the L. Fund, then, subject to the trusts and powers for the benefit of the issue of the said intended marriage hereinbefore contained or created by statute, and to every exercise of any of the said powers, the last-mentioned trustees or trustee for the time being shall stand and be possessed of and interested in the L. Fund and the subsequent yearly produce thereof; [*Add ultimate trust as at* p. 112.]

Wife assigns her furniture (*d*).

AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement in this behalf, and in

(*a*) Treatise, 972. (*b*) *Ib.* 971. (*c*) As to trusts by reference, *ib.* 1301.
(*d*) As to the settlement of corporeal chattels generally, *ib.* 297; and as heirlooms, *ib.* 1327. In the settlement on which this precedent is based there

consideration of the said intended marriage, the said [*intended wife*] as beneficial owner (*a*), with the approbation of the said [*intended husband*], doth hereby assign unto the said [*trustees*], their executors, administrators and assigns, ALL AND SINGULAR the furniture, plate, plated articles, linen, glass, china, books, fixtures, prints, musical instruments and other articles which belong to the said [*intended wife*] and are now in or about and are specified in the schedule hereunder written or hereunto annexed, TO HAVE AND TO HOLD the same unto the said [*trustees*], their executors, administrators and assigns IN TRUST for the said [*intended wife*] until the said intended marriage shall be solemnised, and after the solemnisation thereof UPON TRUST to permit the said [*intended wife*] to have the sole and separate use and enjoyment thereof during her life without power of disposing thereof except as hereinafter mentioned; AND after the death of the said [*intended wife*] in trust for the said [*intended husband*] if he shall survive the said [*intended wife*] during his life; AND after the death of the survivor of them the said [*intended husband and wife*] IN TRUST for the issue of the said intended marriage as the survivor of them the said [*intended husband and wife*] shall by deed or writing or by his or her last will or any codicil thereto appoint; AND in default of such appointment if none, and subject to such if any, IN TRUST for all the children of the said intended marriage who shall be then living and the issue then living of any children or child who shall be then dead, such children taking equally among themselves, and such issue of deceased children or a deceased child taking only the respective shares or the share such deceased children or child would have taken if they, he or she, had been then living; PROVIDED ALWAYS, and it is hereby agreed and declared, that the last-mentioned trustees or trustee for the time being shall not be bound to interfere with the custody of the said furniture, plate and other articles last hereinbefore expressed to be hereby assigned or any of them, or to see to the preservation or insurance thereof, or in any manner to intermeddle in relation thereto, unless at the request in writing of the said [*intended husband and wife*] or one of them: AND IT IS HEREBY FURTHER

PRECEDENT XX.

To hold,

After marriage for wife for life,

for husband for life,

for issue.

Exoneration of trustees from liability (*b*).

Power of exchange.

was not any declaration of trust of the furniture to take effect in default of issue who should become entitled. The undisposed-of interest was left in the wife subject to her disposition. In any like case it would need to be considered whether that interest should not also be settled upon trusts like those at p. 19.

(*a*) Treatise, 320, 324.

(*b*) *Ib.* 1354, 1429.

PRECEDENT XX. AGREED AND DECLARED that the said [*intended husband and wife*] and the survivor of them may sell, exchange or otherwise dispose of any of the articles and premises last hereinbefore expressed to be assigned, and dispose of the proceeds in any manner they, he or she shall think fit, provided that if they, he or she shall sell or otherwise part with any of the said articles, they, he or she shall substitute for the articles so sold or parted with others of equal or greater value, which substituted articles immediately after their acquisition by the said [*intended husband and wife*] or the survivor of them shall become the property of the last-mentioned trustees or trustee for the time being and subject to the trusts hereby declared of the premises last hereinbefore expressed to be hereby assigned; AND the said [*intended husband and wife*] or the survivor of them shall, immediately after every such sale or exchange and substitution as last aforesaid, indorse upon these presents a description of the articles parted with and those substituted respectively; AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful for the last-mentioned trustees and trustee for the time being, at any time or times after the death of the survivor of them the said [*intended husband and wife*], and while any issue of the said intended marriage who may upon the death of the survivor of the said [*intended husband and wife*] become entitled to the said articles or any of them or any interest therein shall be under the age of twenty-one years, to sell all or any of the furniture and chattels which shall then be subject to the trusts hereby declared of the premises last hereinbefore expressed to be hereby assigned, AND that the trustees shall after any and every such sale as last aforesaid stand and be possessed of and interested in the net money produced thereby upon the trusts which if the same sale had not been made would have remained applicable to the chattels so sold as last aforesaid. [*Covenants and Agreements relating to Maintenance of Policy and Substitution of new one*, above, pp. 127, 128; *Power to apportion Blended Trust Funds*, p. 129; *Declaration of Trusts of Rents till Sale*, p. 137; *Trustee Clauses*, p. 116.] IN WITNESS, etc.

Power of sale (*a*).

(*a*) The power of sale in the Settled Land Act 1882 (Treatise, 705) is not applicable to this case.

XXI.

SETTLEMENT *of* MORTGAGE DEBT *and a* LEGACY, *both the Property of the Intended* WIFE; *and a* POLICY *of* LIFE INSURANCE *effected by the* HUSBAND *on his Life* (*a*); *impowering Trustees to* INVEST *Trust Money in the* PURCHASE *of* LAND; *to* LEND *a definite Sum to the* HUSBAND; *and Provisions for Keeping on Foot the* POLICY *of* INSURANCE. *Also*, COVENANT *by the* HUSBAND *to make a* JOINTURE SETTLEMENT *in Satisfaction of Dower.*

THIS INDENTURE, made the day of , BETWEEN [*intended husband*], of etc., of the first part; [*intended wife*], of etc., of the second part; and [*two trustees*], of etc., of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS the said [*intended wife*] is absolutely entitled to the sum of £2000, secured by an indenture of mortgage, bearing date the day of last, and expressed to be made between [*mortgagor*], of , of the one part, and the said [*intended wife*] of the other part, whereby certain lands and hereditaments in the county of were conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*intended wife*], her heirs and assigns, for ever, subject to redemption on payment of the said principal sum of £2000, with interest thereon at the rate of £ per centum per annum; AND WHEREAS *Y Z*, late of , in the county of , deceased, the father of the said [*intended wife*], made his last will in writing, bearing date the day of , and thereby bequeathed to the said [*intended wife*] the sum of £2500, and appointed [*executors*], executors of his said will; AND WHEREAS the said testator died on or about the day of without having revoked or altered his hereinbefore-recited will, which was on the day of ,

Parties.

Recitals of intended marriage,

—of wife's title to mortgage,

—of her father's bequest,

—his death and probate of will,

(*a*) As to settlements of mortgages, see Treatise, 294, showing the reason why the mortgage is transferred by a separate deed; see also *ib.* 301; and as to settlements of life policies, *ib.* 305.

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—of debt and legacy being still due,

—of policy,

—of agreement to settle,

—of transfer of mortgage.

Trust of mortgage money,

188 , proved by the said executors in the Probate Division of the High Court of Justice at the Registry thereof; AND WHEREAS the said mortgage debt of £2000, with interest thereon from the day of last, and the said legacy of £2500 with some interest thereon are still owing and payable to the said [*intended wife*]; AND WHEREAS, by a policy of assurance, etc. [above, p. 124]; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said mortgage debt of £2000 and interest, and the said legacy of £2500, and also the hereinbefore-recited policy of assurance, should be respectively transferred and assigned to and vested in the said [*trustees*], their executors, administrators and assigns, upon and for the trusts, intents and purposes hereinafter declared concerning the same respectively; and also that the said [*intended husband*] should enter into the covenant for payment of an annuity to the said [*intended wife*] hereinafter contained; AND WHEREAS, in pursuance of the said agreement, the said [*intended wife*], by an indenture (*a*) bearing even date with these presents, and expressed to be made between the said [*intended wife*] of the first part, the said [*intended husband*] of the second part, and the said [*trustees*] of the third part, hath conveyed in fee simple and assigned respectively to the said [*trustees*] the said mortgaged hereditaments and the said principal sum of £2000 and interest thereby secured; and it was by the said indenture of even date herewith declared and agreed that the said [*trustees*], their executors, administrators and assigns, should stand and be possessed of the said sum of £2000, with the interest thereon, Upon such trusts, and for such intents and purposes, and under and subject to such powers, provisoes, declarations and agreements, as were or should be expressed and declared of and concerning the same sum and interest by a certain indenture therein mentioned to be already prepared, and intended to bear even date therewith, meaning thereby this present indenture: NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, It is hereby agreed and declared by the parties hereto, that the said [*trustees*], their executors, administrators and assigns, shall henceforth stand and be possessed of and interested in the said sum of £2000 and interest as aforesaid, so assigned to them as hereinbefore mentioned, upon the trusts and for the intents and purposes

(*a*) Below, p 161

hereinafter expressed and declared concerning the same; that is to say, IN TRUST for the said [*intended wife*] until the said intended marriage shall be solemnised, and from and after the solemnisation thereof UPON TRUST that the trustees or trustee of these presents for the time being shall either permit the said sum of £2000 to remain lent on the present security, or, with the consent in writing of the said [*intended husband*] and [*intended wife*] or the survivor of them, and after the death of such survivor then of the proper authority of the last-mentioned trustees or trustee for the time being, call in the said principal money, and again lay out the same in their or his own names or name, [*Investment clause and power to vary*, pp. 109, 110.] AND shall from time to time during the joint lives of the said [*intended husband*] and [*intended wife*] receive the interest, dividends and yearly produce of the said sum of £2000, and of the stocks, funds, shares and securities into or upon which the same may be converted or invested, and pay the same to the said [*intended wife*], for her sole and separate use, but so that she shall not have power to alienate or anticipate the same; And after the death of either of them the said [*intended husband*] and [*intended wife*] shall permit the survivor of them the said [*intended husband*] and [*intended wife*] to receive and take the interest, dividends and yearly produce of the said trust money and premises, for his or her own use and benefit during his or her life, but so far as this trust may operate for the benefit of the said [*intended wife*] it shall be for her sole and separate use without power of anticipation, And after the death of the survivor of them the said [*intended husband*] and [*intended wife*] [*add Trusts for Issue subject to appointment, Hotchpot and Advancement clauses, and Trusts in default of issue*, pp. 110—112]; AND THIS INDENTURE ALSO WITNESSETH that, in consideration of the said intended marriage, the said [*intended wife*], with the consent of the said [*intended husband*], DOTH by these presents as beneficial owner (*b*) assign and convey to the said [*trustees*], their executors, administrators and assigns, ALL THAT the said sum of £2500 bequeathed to the said [*intended wife*] by the hereinbefore-recited will of the said [*intended wife's father*] as aforesaid, and the interest due and henceforth to become due in respect of the same, TO HAVE, RECEIVE AND TAKE the said sum of

PRECED. XXI.

After the marriage.

Trust for wife during lives of herself and husband (*a*),

—for survivor for life.

Assignment of legacy.

To hold

(*a*) As to nature and order of life interests, see Treatise, 857.
(*b*) Treatise, 320, 324.

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£2500, interest and premises expressed to be hereby assigned unto and by the said [*trustees*], their executors, administrators and assigns, IN TRUST for the said [*intended wife*], her executors, administrators and assigns, until the said intended marriage shall be solemnised; and from and after the solemnisation thereof, UPON TRUST that the trustees and trustee of these presents for the time being shall upon receipt of the said sum of £2500, or any part thereof, invest the same, with the consent in writing of the said [*intended husband*] and [*intended wife*] or of the survivor of them, or, if they shall be both dead, then by and of the proper authority of the last-mentioned trustees or trustee for the time being, in their or his names or name, in or upon some or one of the stocks, funds, shares and securities in or upon which it is hereinbefore declared that the said sum of £2000 may be invested, And may from time to time, with such consent or of such authority as aforesaid, vary the same investments for others of the kinds aforesaid, AND ALSO UPON TRUST that the last-mentioned trustees and trustee for the time being shall stand possessed of the said sum of £2500, and the stocks, funds and securities in or upon which the same shall from time to time be invested, and the interest, dividends and yearly produce thereof, upon and for such trusts, intents and purposes, and under and subject to such powers, provisoes, agreements and declarations to take effect after the solemnisation of the said intended marriage, as are hereinbefore expressed concerning the said mortgage debt of £2000, the interest thereon, or such of them as shall be then subsisting undetermined and capable of taking effect; AND THIS INDENTURE ALSO WITNESSETH [*add Assignment by intended husband of policy, and trusts and covenants*, as above, pp. 126—128]. PROVIDED ALSO, and it is hereby further agreed and declared, that it shall be lawful for the trustees or trustee of these presents for the time being, at any time or times after the solemnisation of the said intended marriage, at the request in writing of the said [*intended husband*] and [*intended wife*] or of the

In trust for wife till marriage,

then to invest,

and stand possessed on trusts declared of mortgage debt.

Assignment of policy.

Power to invest in purchase of land (*a*).

(*a*) Treatise, 494. Mr. Jarman observed: "A power to invest in land is not inserted in money settlements, as a matter of course, like the common powers to vary securities and change trustees. It would be well, however, if they were more generally introduced, as the want of such a power sometimes precludes the opportunity of an advantageous investment, or exposes trustees who are bold enough to purchase without authority to the risk of being obliged to take the purchase on themselves if it should turn out unfavourably. Sometimes, indeed, the husband makes the purchase and mortgages to the trustees, who advance the purchase money" (9 Jarm. By. 167). It should, however, be recollected that land

survivor of them, to sell, call in or dispose of all or any of the stocks, funds, shares and securities which shall be vested in the said trustees or trustee for the time being, upon the trusts hereinbefore contained or any of them; and at such request as last hereinbefore mentioned to invest the money to arise by any such sale, calling in or disposition as aforesaid, or any money for the time being subject to the trusts hereby declared or any of them, in the purchase, subject to such conditions or stipulations, reservation of easements or restrictive covenants or conditions, as the last-mentioned trustees or trustee for the time being shall think fit to consent to, of any freehold, copyhold, customary or leasehold manors, messuages or other hereditaments in possession, to be situate in England or Wales, and held for an estate of inheritance in fee-simple, or of any customary inheritance, or for any term or terms of years whereof sixty at the least shall be unexpired at the time of the purchase thereof; And that the manors, messuages or other hereditaments to be so purchased shall be conveyed and assured unto and to the use of the said trustees or trustee for the time being, their or his heirs, executors, administrators and assigns respectively, according to the nature and quality thereof respectively, UPON TRUST that they or he shall at any time or times, with the consent in writing of the said [*intended husband*] and [*intended wife*] or of the survivor of them, and after the death of such survivor then as soon as may be, unless the said trustees or trustee for the time being shall think it expedient to defer the sale, as in that case they and he are hereby authorised to do, during any parts or part or the whole of the minorities or minority of all or any of the persons or person for the time being presumptively or absolutely entitled to the money to be produced by the said sale, sell the same manors or other hereditaments, And shall stand possessed of the money which shall be produced by every such sale as aforesaid, after payment thereout of the expenses incident thereto, upon the trusts and with and subject to the powers, including that of investing in the purchase of manors,

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To be conveyed upon trust for sale.

Trusts of sale money,

is a species of property that requires an amount of care and skill in its management which detracts much from its eligibility as an investment of trust money. At the present day, indeed, the objections to such an investment are more likely to present themselves to the attention of trustees than its advantages. With reference also to Mr. Jarman's observation about purchases of land by means of money lent by trustees, it should be borne in mind that the fact of the borrower being one of the beneficiaries does not authorise the trustees to lend a larger sum in proportion to the value of the land than if they lent to a stranger. As to loans on mortgage, see Treatise, 462.

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messuages or hereditaments which by virtue of these presents would then be applicable to the money with which the manors, messuages or hereditaments sold were purchased if it had not been invested in the purchase of those manors, messuages or hereditaments; And shall until the said manors, messuages and hereditaments shall be sold, pay out of the rents, issues and profits thereof, or of so much thereof as shall from time to time remain unsold, any such sums as the said trustees or trustee for the time being may think it expedient to pay on account of any charge on or for the repair or insurance of the manors, messuages or hereditaments purchased or any of them, and shall pay and apply the residue of the said rents and profits to the person or persons and in the manner to whom and in which, if the said manors, messuages and hereditaments were sold, the interest, dividends and yearly produce of the money produced by the sale of the said manors, messuages or hereditaments, and of the stocks, funds and securities in or upon which the same shall be invested, would be payable or applicable; And it is hereby further declared that the hereditaments to be so purchased as aforesaid shall, from and immediately after the purchase thereof respectively, be considered for all the purposes of this settlement as personal estate, though no actual conversion thereof into money shall have taken place; PROVIDED ALSO that it shall be lawful for the said trustees or trustee for the time being, at any time or times during the lives or life of the said [*intended husband*] and [*intended wife*] or the survivor of them, with their, his or her consent in writing, and after the death of such survivor at the discretion of the said trustees or trustee for the time being, to convey any hereditaments so purchased as aforesaid in exchange for any manors, messuages or other hereditaments of any of the kinds and so situate as aforesaid, and upon any and every such exchange as aforesaid to give or receive any money for equality of exchange, the manors, messuages or hereditaments to be taken in exchange thereupon becoming subject to the trusts herein declared of the manors, messuages or hereditaments to be so purchased as aforesaid, and any money to be given in exchange to be paid out of capital money subject to any of the trusts of these presents, and any money to be taken in exchange to be subject to the trusts hereby declared of money

—of rents till sale.

Powers to exchange (*a*).

(*a*) It is still proper to give trustees for sale of land these powers of exchange and leasing (Treatise, 292, 293).

to be produced by sale of manors, messuages or hereditaments so purchased as aforesaid, PROVIDED ALSO that it shall be lawful for the said trustees or trustee for the time being, with such consent or at such discretion as aforesaid, to grant any leases of any messuages, lands, tenements and hereditaments to be so purchased as aforesaid, for any term not exceeding twenty-one years in possession, at the most improved rents, without taking any fine, premium, or foregift; PROVIDED ALSO, and it is hereby further agreed and declared, that it shall be lawful for the said trustees or trustee for the time being, at the request of the said [*intended wife*], with and out of the said trust money, stocks, funds, shares and securities, to lend to the said [*intended husband*] any sum or sums of money not exceeding in the whole the sum of £1000, at such rate of interest as the said trustees or trustee for the time being shall deem reasonable, without requiring any further or other security for the said principal money and interest than the bond or covenant of the said [*intended husband*]; AND FURTHER, that it shall be lawful for the said trustees or trustee for the time being, at the like request of the said [*intended wife*], to continue such loan as aforesaid to the said [*intended husband*], as well after the decease as in the lifetime of the said [*intended wife*], for such period as the said trustees or trustee for the time being in their or his discretion shall think proper, anything hereinbefore contained or any rule of law or equity to the contrary notwithstanding; AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the last hereinbefore recited agreement, and in consideration of the said intended marriage, the said [*intended husband*] doth hereby covenant with the said [*trustees*] that in case the said intended marriage shall be solemnised, and the said [*intended wife*] shall survive the said [*intended husband*], the heirs, executors or administrators of the said [*intended husband*] shall yearly, during the then residue of the life of the said [*intended wife*], pay to the said [*intended wife*] or her assigns an annuity or yearly sum of £100, clear of all taxes except property or income tax (*b*) and other deductions whatsoever, by half-yearly

PRECED. XXI. —to lease.

—to lend to husband (*a*).

Husband's covenant for payment of annuity to surviving wife.

(*a*) Treatise, 489. It should be observed that this power to lend is capable of being exercised during the life of the wife only, but a loan once made may be permitted to remain after her death. The precise intent must in every case be ascertained and expressed.

(*b*) If this is, as it usually is, the intent in had better be expressed: see Treatise, 926—928.

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payments, on the day of , and the day of , in every year, the first payment thereof to be made on such of the said days of payment as shall first happen after the death of the said [*intended husband*]; the said annuity or yearly sum of £100 to be for the jointure of the said [*intended wife*], and in bar of all dower and freebench to which she might otherwise be entitled in or out of any manors or hereditaments whereunto the said [*intended husband*] now is or hereafter shall be entitled; And also, that the said [*intended husband*] will, or his heirs and all other necessary parties shall, at his or their own costs, within one year next ensuing the death of [*husband's father*], effectually subject and charge all and every or a sufficient part or parts of the messuages, lands, tenements, hereditaments and real estate, of or to which the said [*intended husband*] shall, upon the death of his said father, become seised or entitled at law or in equity, to or with the payment of the said annuity or yearly sum of £100 (*a*). [*Trustee clauses*, p. 116; *Exoneration of trustees, and power to apportion blended funds*, see pp. 129, 177, 182.] IN WITNESS, etc.

and charge it on hereditaments.

(*a*) Add, if the land to be affected by the covenant is subject to a law generally like that of England, but not having such a statute as 44 & 45 Vict., c. 41, s. 44, "with the usual powers of enforcing payment of the said annuity of £100 in case the same shall become in arrear by entry and distress and perception of the rents and profits."

XXII.

SETTLEMENT ON MARRIAGE *of the intended* WIFE'S REVERSIONARY SHARE *of a* STOCK-LEGACY; *and her* SHARE *in* RESIDUARY PERSONAL ESTATE (*a*).

THIS INDENTURE, made the day of , 18 , BETWEEN [*intended husband*], of etc., of the first part; [*intended wife*], of etc., spinster, of the second part; and [*trustees*], of etc., of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS, by virtue of the last will and testament of [*father*], of etc., the late father of the said [*intended wife*], proved at on the day of , the said [*intended wife*] is absolutely entitled in expectancy on the death of [*legatee for life*] to one equal sixth part of the sum of £2700 Consolidated £3 per centum Annuities, which is now standing in the names of [*executors*], executors of the said will; AND WHEREAS the said [*intended wife*] is also absolutely entitled under the last will and testament of her mother [*name*], late of , deceased, proved at on the day of , to one-fourth part or share of the residue, after payment of the funeral and testamentary expenses, debts, and legacies of the said testatrix, of her personal estate and effects thereby bequeathed, and the produce thereof; and the said [*intended wife*] may, in the events in the said will particularly mentioned, become entitled to some further share or interest in the said residue; AND WHEREAS, on the treaty for the said intended marriage, it was agreed that the said shares so vested in the said [*intended wife*] in the said legacy and residue respectively, as well as all and any other vested or contingent interest of her the said [*intended wife*] of and in the said residue so bequeathed by the said will of her said late mother as aforesaid, should be settled upon the trusts and for the purposes hereinafter expressed concerning the same; NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of

Parties (*b*).

Recital (*b*) of intended marriage,

—of wife's title to legacy by her father,

—and to share in her mother's estate.

Agreement to settle.

Assignment.

(*a*) As to settlements of shares of personalty, see Treatise, 296.
(*b*) As to parties and recitals, *ib.* 278—284.

PRECED. XXII. the said intended marriage, the said [*intended wife*] as beneficial owner (*a*), with the approbation of the said [*intended husband*], DOTH by these presents assign and convey unto the said [*trustees*], their executors, administrators and assigns, ALL THAT the undivided sixth part or share of and in the said sum of £2700 Consolidated £3 per centum Annuities, to which the said [*intended wife*] is so entitled as aforesaid, AND ALSO ALL AND SINGULAR the shares and interest, whether vested or contingent, and whether in possession, reversion, remainder or expectancy, of the said [*intended wife*], of and in the said residue of personal estate and effects bequeathed by the hereinbefore-recited will of the said [*mother*], as aforesaid; TO HAVE, RECEIVE, AND TAKE the said several shares and premises hereinbefore assigned or otherwise assured unto the said [*trustees*], their executors, administrators and assigns, upon the trusts hereinafter expressed concerning the same, (that is to say) in trust for the said [*intended wife*] until the solemnisation of the said intended marriage, And after the solemnisation thereof, UPON TRUST that the trustees and trustee for the time being of these presents shall, as to those parts of the premises to which the said [*intended wife*] is entitled in possession immediately, and as to the residue of the premises when her expectant interests therein shall fall into possession respectively, call in, compel transfer and payment of, and receive all such parts of the shares and interests hereby assigned as shall consist of money or of loans either unsecured, or if secured not secured by securities upon which the trustees of these presents are hereby authorised to lend trust money; AND SHALL SELL all such parts of the said shares and interests hereby assigned as shall consist of any stocks, funds, shares or other property in which the trustees of these presents are not hereby authorised to invest trust money; AND SHALL either permit the said one-sixth part of the said sum of £2700 Consolidated £3 per centum Annuities, and any other stocks, funds or securities of any of the kinds in or upon which investments or loans of money subject to the trusts of these presents are hereby authorised, which may be transferred to the said trustees or trustee for the time being as representing the said one-sixth part of the said sum of Consolidated £3 per centum Annuities, as part or parts of the residue hereinbefore mentioned to remain in their then existing state of investment, or shall at any time or

To hold.

Trust to convert into money,

(*a*) Treatise, 320, 324

times, with the consent of the said [*intended husband and wife*] during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee for the time being, sell, call in and convert into money all or any or any part or parts of any such shares, stocks, funds and securities as shall so have been transferred as last aforesaid (*a*); AND SHALL INVEST as well the money produced by every such sale, calling in and conversion as aforesaid, as any and all principal money which may become payable in respect of the shares and interests hereby assigned of the said [*intended wife*] by virtue of the hereinbefore-recited will when and as they shall be respectively received [*Investment Clause and Power to vary Investments*, above, pp. 109, 110; *Trusts for Wife, Husband, and Issue, Hotchpot and Advancement Clauses, Trust in Default of Issue, and Trustee Clauses*, above, pp. 110—112, 116].

and invest.

(*a*) The following is a shorter and sufficient, though less explicit form: "call in, sell, and convert into money, all such parts of the premises as shall not consist of money, and invest such parts of the premises as shall consist of money and also all the net money produced by such calling in, sale and conversion, as aforesaid."

XXIII.

SETTLEMENT ON MARRIAGE *of Intended* WIFE'S PERSONALTY; *Life Interest to Wife; Annuity for Husband; No Provisions for* CHILDREN; *Colonial Stocks registered in England; English Railway Company's Stock separately transferred; Securities passing by Delivery* (*a*).

Parties (*b*).

THIS INDENTURE, made the day of , BETWEEN [*intended wife*], of the first part; [*intended husband*], of the second part; and [*trustees*], of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband and wife*]; AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said [*intended wife*] should settle in the manner, upon the trusts, and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same, the shares, stocks, funds and securities hereinafter stated to have been transferred by her, and the debentures hereinafter stated to have been delivered by her into the names of and to the said [*trustees*] respectively, and the principal money secured by the said debentures and other securities respectively, and the dividends, interest and yearly or other produce of the said shares, debentures, securities and principal money respectively;

Recitals (*b*): Intended marriage,

Agreement to settle.

Transfer of stocks.

AND WHEREAS in part performance of the said agreement the said [*intended wife*] has before the date and execution of these presents transferred into the joint names of the said [*trustees*] in the registers thereof respectively kept (*c*) by the several sums of stocks specified in the first part of the Schedule hereunder written or hereunto annexed, And has also transferred to the said [*trustees*] the shares in the capital stocks which are described in the second part of the said Schedule hereto, and has delivered to the said [*trustees*] the

(*a*) This settlement, though abnormal in the interests created, contains forms which may be useful in many cases.

(*b*) As to parties and recitals, see Treatise, 278—284.

(*c*) These were stocks registered in England under the Colonial Stock Act 1877, 40 & 41 Vict., c. 59; Treatise, 450, 482.

debentures and other securities specified in the third part of the said Schedule hereto; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the said intended marriage, the said [*intended wife*] doth hereby, with the approbation of the said [*intended husband*], Declare that the said [*trustees*], their executors, administrators and assigns shall stand and be possessed of and interested in ALL THOSE the said sums of stocks hereinbefore mentioned to have been transferred into the names of the said [*trustees*] as aforesaid; AND ALL THOSE the said shares and sums of stocks hereinbefore mentioned to have been transferred to the said [*trustees*] as aforesaid; AND ALL THOSE the debentures and other securities hereinbefore mentioned to have been delivered by the said [*intended wife*] to the said [*trustees*] as aforesaid; AND also of and in the principal sums of money secured by the said debentures and securities as aforesaid; AND also of and in all the dividends, interest, and other produce now due and hereafter to become due in respect of the said sums of stock, shares, debentures, securities, and money respectively, UPON the trusts and with and subject to the powers, provisoes and declarations hereinafter expressed concerning the same, (that is to say) IN TRUST for the said [*intended wife*] until the said intended marriage shall be solemnised; AND after the solemnisation thereof [*Trusts relative to Investment and Payment of Yearly Produce to Wife for Life*, as above, pp. 109, 110]; AND after the death of the said [*intended wife*], if the said [*intended husband*] shall survive her, SHALL pay to him or his assigns during the residue of his life, out of the income of the said trust money, stocks, funds, shares and securities, the yearly sum of £ , and subject to the trust last hereinbefore contained for payment of the said yearly sum of £ , shall from and after the death of the said [*intended wife*] stand and be possessed of and interested in the said trust money, stocks, funds, shares and securities, and so much of the subsequent income thereof as shall not be required for payment of the said yearly sum of £ , IN TRUST for such person or persons and for such purposes as the said [*intended wife*] shall by any deed or deeds or writing or writings sealed and delivered by her or by will or codicil

PRECED. XXIII.

Declaration of trust.

Parcels.

After wife's death, annuity to husband (*a*).

(*a*) This provision, though an unusual one, is printed for the sake of the subsequent power to appropriate a fund for payment of the annuity.

PRECED. XXIII.

Power to appropriate fund to answer annuity.

appoint, AND in default of and subject to any such appointment [*Continue as above*, p. 112]; AND IT IS HEREBY AGREED AND DECLARED that it shall be lawful at any time after the death of the said [*intended wife*] for the trustees or trustee for the time being of these presents to appropriate to the purpose of providing an income for payment of the said yearly sum of £ any such part of the said trust money, stocks, funds, shares and securities as they or he shall think sufficient for that purpose; AND from and after the appropriation by the said trustees or trustee for the time being of such a part of the said trust money, stocks, funds, shares and securities as aforesaid for the purpose aforesaid, the residue of the said trust money, stocks, funds, shares and securities, and the subsequent yearly produce thereof, shall be discharged from the trust for payment of the said yearly sum of £ hereinbefore contained; AND from time to time during the residue of the life of the said [*intended husband*] the said trustees or trustee for the time being shall apply the income of the fund so appropriated as aforesaid, or a sufficient part thereof, or if the yearly produce of that fund shall at any time prove insufficient shall apply so much of the capital as with the yearly produce of the said fund or of the part thereof which shall for the time being remain shall be sufficient to pay the said yearly sum of £ , in payment of that yearly sum to the said [*intended husband*] or his assigns; AND SUBJECT to the trusts for the payment of the said yearly sum hereinbefore contained, the said [*trustees*] or trustee for the time being shall stand possessed of the said appropriated fund upon the trusts hereinbefore declared of the stocks, funds,shares and securities out of which it shall have been appropriated other than the said trusts for the payment of the said yearly sum of £ . AND IT IS HEREBY DECLARED that the powers hereby given to the said trustees and trustee for the time being for the investment and variation of investment of the said trust money, stocks, funds, shares and securities shall, if and after any such appropriation as aforesaid of a part thereof shall have been made, be capable of being exercised over or with reference to the appropriated fund or any part or parts thereof, as well as over or with reference to the trust money, stocks, funds, shares and securities out of which the said fund shall have been so appropriated as aforesaid; PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, that so long as and at any time or times while any of the money or funds for the

Power to deposit with bankers securities payable to bearer.

time being subject to the trusts of these presents shall be vested in or upon the security of or shall consist of any bond or bonds, document or documents, which is, are or shall be made payable to the bearer or respective bearers thereof, and is, are or shall be a bond or document or bonds or documents in or upon which the said trustees or trustee for the time being are hereinbefore authorised to permit the trust money to remain, or to invest trust money, then and during such time or times as any money subject to the trusts of these presents shall remain invested in such manner as last expressed, it shall be lawful for the said trustees or trustee for the time being to place the bonds and documents in or upon the security of which such trust money shall remain or be invested in the custody of any banker or bankers or banking company without being responsible for any misapplication of the said bond or document or bonds or documents so deposited or of any of them, or of any money secured by it or them or any of them by any such banker or bankers or banking company as aforesaid, and without being liable for any loss which may happen thereby (*a*), [*Trustee clauses*, above, p. 116]. IN WITNESS, etc. PRECED. XXIII.

THE SCHEDULE which is referred to in the above-written Indenture.

First Part: Description of the Colonial Stocks inscribed in Register in London.

Second Part: Description of Stocks and Shares passing by separate Transfer Deeds or Writings.

Third Part: Description of Securities passing by Delivery.

FORMS IN SETTLEMENTS BY INFANTS.

A.

AND WHEREAS by an Order of the High Court of Justice made by the Honourable Mr. Justice on the day of "In the matter of *A B*, an infant, by *B B* his [*or* her] next friend" and "In the matter of an Act of Parliament 18 & 19 Vict. c. 43, intituled 'An Act to enable Infants with the approbation of the Court of Chancery to make binding Settlements of their Real and Recital of Order of Court.

(*a*) The settlement from which this precedent is taken not only comprised originally but authorised the subsequent acceptance of securities payable to bearer. If it be wished that the trustees should be empowered to deposit securities payable to bearer with any one or with a specified one of their number this clause can be readily adapted to that purpose. See Treatise, 408—410.

FORMS.

Personal Estate on Marriage'" (*a*) Upon the application of the said *A B*, the said Judge being of opinion that the settlement proposed to be effected by these presents is a proper settlement of the fortune of the said infant to be made in contemplation of the said intended marriage, and that this present Indenture (which is identified by the signature of his Lordship's Chief Clerk in the margin hereof) is a proper indenture for giving effect to such settlement, hath, pursuant to the aforesaid Act of Parliament, sanctioned and approved of such settlement, and hath ordered that the said infant be at liberty in contemplation of his [*or* her] marriage with the said *C D* to execute these presents accordingly (*b*).

B.

Ultimate trust of proceeds of sale of infant's land conveyed on trusts for sale to take effect, in default of issue, for wife, as land (*c*).

PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*intended wife*] shall die under the age of twenty-one years, and there shall be no child of the said intended marriage who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry under that age, then subject and without prejudice to the trusts hereinbefore declared in favour of the said [*intended wife*] during her life and of the said [*intended husband*] and the issue of the said intended marriage, And from and after the death of the said [*intended wife*] and the failure or determination of the trust hereinbefore declared in favour of the said [*intended husband*], and such default or failure of children as aforesaid, which shall last happen, the money (if any) which shall have arisen from the sale of all or any part of the said moiety and hereditaments by the said indenture of even date herewith granted as aforesaid, and the stocks, funds and securities in or upon which the same money may be invested, and also all or any part of the said undivided moiety and hereditaments which shall not actually be sold, shall be and remain in trust for the said [*intended wife*] and her heirs as real estate.

(*a*) Treatise, 62—65.

(*b*) Mr. Brickdale, the senior Conveyancing Counsel to the Chancery Division, kindly furnished me with this form, which, though generally suitable, will need variation in accordance with the order actually made. Mr. Brickdale has pointed out that it is inaccurate to insert in a settlement made under this Act the trust for the settlor until marriage usual in other settlements, because settlements under this Act have not any force unless and until the contemplated marriage is solemnised.

(*c*) Though this clause may only express what without it would be the true interpretation of the deed (*A. G.* v. *M. of Ailesbury*, 12 App. Ca. 672), it may preclude dispute.

XXIV.

TRANSFER OF MORTGAGE *previously to* MARRIAGE *upon* TRUSTS *which are declared by a Separate* DEED (*a*).

THIS INDENTURE, made the day of BETWEEN [*intended wife*] of etc., of the first part, [*intended husband*] of etc., of the second part, and [*trustees*] of etc., of the third part. Par (*b*).

WHEREAS a marriage is intended to be solemnised between the said [*intended husband and wife*], AND WHEREAS by an indenture bearing date the day of and expressed to be made between [*mortgagor*] of the one part and the said [*intended wife*] of the other part, in consideration of the sum of £5000 to the said [*mortgagor*] paid by the said [*intended wife*], the said [*mortgagor*], for himself, his heirs, executors and administrators, covenanted with the said [*intended wife*] for payment on the day of then next to the said [*intended wife*], her executors, administrators or assigns, of the sum of £5000, with interest for the same in the meantime at the rate of 4 per centum per annum without any deduction; And by the same indenture the said [*mortgagor*] did grant unto the said [*intended wife*], her heirs and assigns, ALL THAT etc. [*parcels*], with their rights, easements and appurtenances, To hold the same unto and to the use of the said [*intended wife*], her heirs and assigns, subject to a proviso in the indenture now in recital contained for redemption of the same hereditaments on payment by the said [*mortgagor*], his heirs, executors, administrators and assigns, to the said [*intended wife*], her executors, administrators or assigns, on the said day of then next, of the sum of £5000, with interest for the same in the meantime at the rate of 4 per centum per annum, without any deduction except in respect of property or income tax; And by the same indenture the said [*mortgagor*] covenanted with the said [*intended wife*] that if the said sum of £5000 or any part

Recital (*b*) of intended marriage,

—of the mortgage to the intended wife,

(*a*) The reasons for transferring the mortgage by another deed than that declaring the trust of the money are stated in the Treatise, 294.

(*b*) As to parties and recitals, see *ib*. 278—284, 294.

PRECED. XXIV. thereof should remain unpaid after the said day of then next, the said [*mortgagor*], his heirs, executors or administrators would thenceforth, so long as the same sum or any part thereof should remain unpaid, pay to the said [*intended wife*], her executors, administrators or assigns, interest for the said sum of £5000, or for so much thereof as should for the time being remain unpaid, at the rate of 4 per centum per annum, by equal half-yearly payments on the day of and the day of in every year, without any deduction except in respect of property or income tax; AND WHEREAS the said principal sum of £5000 is still owing to the said [*intended wife*] on the security of the hereinbefore-recited indenture, with interest thereon from the day of last; AND WHEREAS upon the treaty for the said intended marriage it was (among other things) agreed that the said sum of £5000 and the interest now due and henceforth to become due thereon, and the securities for the same, should be assigned to the said [*trustees*] in the manner and for the purposes hereinafter appearing; NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the said intended marriage, the said [*intended wife*], with the approbation of the said [*intended husband*], Doth hereby assign and convey to the said [*trustees*] ALL THAT the said principal sum of £5000 by the said indenture of the day of secured to be paid to the said [*intended wife*], her executors, administrators and assigns, as hereinbefore is mentioned, AND all the interest now due and henceforth to become due for the same, AND the full benefit and advantage of all the covenants contained in the same indenture for the payment of the said principal sum of £ and interest, TO HAVE, RECEIVE AND TAKE the said principal sum and interest, and all other the premises hereinbefore assigned or intended so to be, unto the said [*trustees*], their executors, administrators and assigns, IN TRUST for the said [*intended wife*], her executors, administrators and assigns, until the said intended marriage shall be solemnised, and immediately after the solemnisation thereof UPON SUCH TRUSTS and for such intents and purposes, and under and subject to such powers, provisoes, agreements and declarations, as are or shall be expressed and declared of and concerning the said principal sum and interest by an indenture which is already prepared and is intended to bear even date with these presents, and to be made between the said [*intended husband*]

—of the state of the mortgage debt,

—of the agreement to settle.

Assignment of mortgage debt.

To hold

after marriage upon trusts declared by settlement.

of the first part, the said [*intended wife*] of the second part, and the said [*trustees*] of the third part; AND the said [*intended wife*] doth hereby covenant with the said [*trustees*] that the said [*intended wife*] hath not at any time heretofore done or knowingly suffered or been party or privy to anything whereby the premises hereinbefore expressed to be hereby assigned and conveyed, or any part thereof, are, is or may be impeached, affected or incumbered in title, interest, or otherwise howsoever; AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and for the consideration hereinbefore mentioned, the said [*intended wife*] as mortgagee (*a*), and with the privity of the said [*intended husband*], DOTH hereby grant and convey unto the said [*trustees*], their heirs and assigns, ALL AND SINGULAR the and hereditaments in the hereinbefore-recited indenture described or expressed to be thereby granted as aforesaid, and all other (if any) the hereditaments which now by any means are vested in the said [*intended wife*], subject to redemption under or by virtue of the hereinbefore-recited indenture, TO HAVE AND TO HOLD the said hereditaments, and all other the premises hereby granted and conveyed or intended so to be, unto and TO THE USE of the said [*trustees*], their heirs and assigns for ever, but SUBJECT to such right, title and equity of redemption (if any) as is or from time to time shall be subsisting in respect of the same hereditaments and premises under or by virtue of the proviso for redemption contained in the hereinbefore-recited indenture of the day of , 18 , on payment to the said [*trustees*] or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns, of the said sum of £5000 and the interest now due as aforesaid and henceforth to become due for the same. [*Nomination of persons to appoint new trustees*, p. 117.] IN WITNESS, etc. (*b*)

Covenant by wife as to incumbrances(*a*)

Conveyance of mortgaged hereditaments.

(*a*) See below, p. 249.
(*b*) Notice of this deed should be given to the mortgagor.

XXV.

ASSIGNMENT *in contemplation of* MARRIAGE *of a* PORTION *to which the intended* WIFE *is entitled to* TRUSTEES *to hold upon* TRUSTS *declared by Deed of even date* (*a*).

Parties (*b*). THIS INDENTURE, made the day of , 18 , BETWEEN [*intended husband*] of the first part, [*intended wife*] of the second part, and [*trustees*] of the third part: [*Recitals of intended marriage* (above, p. 161), *of settlement on marriage of parents of intended wife, showing creation of a term of* 1000 *years upon trust to raise after death of her father* £6000 *for portions of children other than the eldest child for the time being of that marriage equally, and statement that the intended wife is one of three such children, and that her father had died.*]

Recitals (*b*) showing wife's title to portion.

AND WHEREAS the said [*intended wife*] attained the age of twenty-one years on the day of , 18 , and had not before attaining that age become, as the eldest child for the time being of the said [*intended wife's father*], under or by virtue of the limitations contained in his will or otherwise, entitled either as tenant for life or in tail or in fee to the family estates of the said [*intended wife's father*]; AND WHEREAS neither all nor any part of the sum of £2000, being one-third part of the said sum of £6000, to which the said [*intended wife*] has so as aforesaid become entitled by virtue of the trusts of the said term of 1000 years declared in the hereinbefore-recited indenture, has been paid to or raised for her, but all interest for the said sum to which she had become entitled up to the day of last has been paid to her;

Agreement to settle.

AND WHEREAS upon the treaty for the said intended marriage it was (among other things) agreed that the said sum of £2000 and the interest now due and henceforth to become due for the same, and the benefit of the said trusts for securing payment of the same principal sum and interest respectively, should be assigned to the said [*trustees*] in the

(*a*) As to the settlement of portions charged on land, see Treatise, 295.
(*b*) As to parties and recitals, *ib.* 278—284, 294.

manner and for the purposes hereinafter appearing; NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*intended wife*], with the approbation of the said [*intended husband*], doth hereby as beneficial owner (*a*) assign and convey unto the said [*trustees*], ALL THAT the said principal sum of £2000 sterling, to which the said [*intended wife*] has so as aforesaid become entitled by virtue of the trusts of the said term of 1000 years declared in the hereinbefore-recited indenture and the interest now due and henceforth to become due in respect thereof, and the benefit of the aforesaid trusts and directions for securing payment of the said principal sum and interest, TO HAVE, RECEIVE AND TAKE the said principal sum and interest, and all other the premises hereinbefore expressed to be hereby assigned and conveyed unto the said [*trustees*], their executors, administrators and assigns, IN TRUST for the said [*intended wife*] until the said intended marriage shall be solemnised, and after the solemnisation thereof UPON SUCH TRUSTS and with and subject to such powers, provisoes, agreements and declarations as are or shall be expressed concerning the same sum and interest respectively by an indenture which is already prepared and is intended to bear even date with these presents, and is intended to be made between the same persons as parties thereto as are parties to these presents, and in the same order. [*Nomination of persons to appoint new trustees*, above, p. 117.] IN WITNESS, etc (*b*).

PRECED. XXV.

Assignment of portion.

To hold

After marriage

Upon trusts of settlement.

(*a*) Treatise, 320—324.

(*b*) Notice of this deed should be given to the trustees of the 1000 years term.

XXVI.

CONVEYANCE *by intended* HUSBAND *of* FREEHOLD HEREDITAMENTS *to* TRUSTEES *in anticipation of* MARRIAGE, *and upon* TRUST FOR SALE, *and to hold the* SALE MONEY *upon Trusts declared by Deed of even date* (*a*).

Parties (*b*). THIS INDENTURE, made the day of , 18 , BETWEEN the [*intended husband*] of the first part, the [*intended wife*] of the second part, and [*trustees*] of the third part [*Recital of intended marriage*, above, p. 167]: AND WHEREAS

Recitals (*b*) of husband's title to land, the said [*intended husband*] is seised of the hereditaments hereinafter expressed to be hereby granted for an estate of inheritance in fee simple in possession free from incumbrance;

and agreement to settle. AND WHEREAS upon the treaty for the said intended marriage it was agreed (among other things) that the said [*intended husband*] should convey the said hereditaments hereinafter expressed to be hereby granted to the said [*trustees*] and their heirs, TO THE USES, upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same;

Conveyance. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said intended marriage the said [*intended husband*] as beneficial owner (*c*), and with the privity and approbation of the said [*intended wife*], Doth hereby grant unto the said [*trustees*]

To hold, and their heirs ALL THAT [*parcels*] (*d*), TO HAVE AND TO HOLD the said messuages, land and hereditaments, and all other the premises either expressed or intended to be hereby granted unto the said [*trustees*] and their heirs, TO THE USE of the said [*intended husband*], his heirs and assigns, until the said

After marriage, intended marriage shall be solemnised; And from and after the solemnisation thereof

To use of trustees in fee, TO THE USE of the said [*trustees*], their heirs and assigns for ever, UPON THE TRUSTS and with and

(*a*) See Treatise, 290—293; and Precedents, above, p. 134.
(*b*) As to parties and recitals, see Treatise, 278—284.
(*c*) *Ib.* 320—324.
(*d*) The "General words" and "All the estate" clauses formerly added to descriptions of land are now generally omitted (Treatise, 290).

subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same, (that is to say) Upon trust that the trustees or trustee of these presents for the time being shall at such time or times during the lives of the said [*intended husband*] and [*intended wife*] or the life of the survivor of them as they he or she shall in writing direct, And after the death of the survivor of them then at such time or times as the said trustees or trustee for the time being shall in their or his discretion think fit, sell the premises hereinbefore expressed to be hereby granted (*a*); AND IT IS HEREBY AGREED AND DECLARED that the said trustees or trustee for the time being shall by and out of the money produced by any and every such sale as aforesaid pay the expenses incurred in or about that sale, or otherwise in or about the execution of any of the trusts or powers of these presents, And shall stand possessed of and be interested in the residue of the same money, And also, until all the premises shall be sold, of and in the rents, issues and profits thereof or of such parts thereof as shall from time to time remain unsold, Upon such trusts and with and subject to such powers, provisoes, agreements and declarations as are or shall be expressed concerning the same respectively in an indenture which is already prepared, etc. [above, p. 165]; PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said trustees or trustee for the time being, at any time or times after the said intended marriage shall have been solemnised, and before all the premises hereinbefore expressed to be hereby granted shall have been sold, at the request in writing of the said [*intended husband*] and the said [*intended wife*] during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the said trustees or trustee for the time being, to accept a surrender or surrenders of any then existing lease or leases of all or any part or parts of the premises, and also by deed to demise all or any part or parts of the premises for any term of years not exceeding twenty-one years, to begin at or within twelve calendar months next after the date of the demise, so as there be reserved the best yearly rent or rents that can be reasonably obtained without taking anything in the

Upon trust for sale.

Trust of proceeds of sale.

Power to lease for twenty-one years (*b*).

(*a*) The expansion of this trust, formerly usual, is now at any rate unnecessary, and generally disused (Treatise, 292).

(*b*) This power should still be inserted (Treatise, 292, 293, 735); as to powers of leasing, see *ib.* 521—567; see ampler power, below, p. 174.

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nature of a fine or premium, and so as there be contained in every such demise a condition of re-entry for non-payment of any rent thereby reserved within a period not exceeding thirty days next after the same shall have become payable, and so as the lessee or lessees do execute a counterpart of the same lease and do thereby covenant for the due payment of the rent or rents thereby reserved; PROVIDED nevertheless that the execution of any such lease as aforesaid by the grantor or grantors thereof shall in favour of the lessee or lessees, his or their executors, administrators and assigns, be deemed sufficient evidence that such a counterpart thereof as aforesaid has been duly executed (*a*). [*Nomination of persons to appoint new trustees*, p. 117; *Restriction of implied covenants for title to the acts of the settlor*, p. 23.] IN WITNESS, etc.

(*a*) Treatise, 560.

XXVII.

CONVEYANCE *of an Undivided* SHARE *of an Estate*, PREVIOUSLY *to* MARRIAGE, *in* TRUST *for* SALE. *The* TRUSTS *of the* MONEY *are declared by a* SEPARATE DEED (*a*). POWER *to* CONCUR *in a* PARTITION.

THIS INDENTURE, made the day of , 18 , BETWEEN [*intended wife*], of etc., of the first part; [*intended husband*], of etc., of the second part; and [*trustees*], of etc., of the third part; WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and [*intended wife*]; AND WHEREAS the said [*intended wife*] is seised or entitled for an estate of inheritance in fee-simple of or to one undivided third part or share of and in the land and hereditaments hereinafter particularly described; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*intended wife*] should convey her said undivided third part of and in the said hereditaments unto the said [*trustees*], their heirs and assigns, to the uses, upon and for the trusts and purposes, and subject to the powers, provisoes, agreements and declarations hereinafter expressed or referred to concerning the same; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, the said [*intended wife*], with the privity of the said [*intended husband*], DOTH as beneficial owner (*c*) hereby grant and convey unto the said [*trustees*] and their heirs, ALL THAT one undivided third part, or other the share of her the said [*intended wife*], of and in [*describe parcels*]; TO HAVE AND TO HOLD the said undivided third part of and in the said land and hereditaments hereinbefore described, and other the premises hereby granted or intended so to be, unto the said [*trustees*] and their heirs, To THE USE of the said [*intended wife*], her heirs and assigns, until the said intended marriage shall be solemnised; And after the

Parties (*b*).

Recital (*b*) of intended marriage,

of wife's title,

of agreement to settle.

Conveyance.

To hold.

(*a*) See Treatise, 290—293; and Precedents, above, p. 134.
(*b*) As to parties and recitals, see Treatise, 278—284.
(*c*) *Ib.* 320—324.

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After marriage in trust for sale.

solemnisation thereof To THE USE of the said [*trustees*], their heirs and assigns, for ever; nevertheless upon and for the trusts, intents and purposes, and subject to the powers, provisoes, agreements and declarations hereinafter expressed or referred to concerning the same, (that is to say) UPON TRUST that the said [*trustees*] or the survivor of them, or other the trustees or trustee of these presents for the time being, shall, with the consent in writing of the said [*intended husband*] and [*intended wife*] or of the survivor of them, and after the decease of such survivor then at the discretion of the said trustees or trustee for the time being, absolutely sell and dispose of the said undivided part and hereditaments hereby granted or any part thereof; AND FURTHER, that the trustees or trustee for the time being of these presents shall by and out of the money produced by any and every sale which shall be made in pursuance of the trust hereinbefore contained, pay the expenses incurred in or about such sale or otherwise in or about the execution of any of the trusts or powers of these presents, And shall stand possessed of and be interested in the residue of the same money, and also of the rents and profits of the said undivided part or share, hereditaments and premises, until the same shall be sold, Upon and for such trusts, intents and purposes, and subject to such powers, provisoes, agreements and declarations as are or shall be expressed concerning the same respectively, in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between the said [*intended husband*] of the first part, the said [*intended wife*] of the second part, and the said [*trustees*] of the third part; PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time or times hereafter before the premises hereby granted shall be sold in execution of the trusts hereinbefore contained, and at the request in writing of the said [*intended husband*] and [*intended wife*] or of the survivor of them during their, his or her lives or life, and after the death of such survivor then at the discretion of the said trustees or trustee for the time being, to concur with the person or persons for the time being seised of or entitled to the other undivided part or parts of and in

And to hold proceeds on the trusts of the settlement.

Power to concur in partition (*a*).

(*a*) Notwithstanding the S. L. A. 1882, the insertion of this power is still appropriate: S. L. A. 1884, s. 6 (1); Treatise, 292, 293, 735. As to powers to make partition, *ib.* 570.

the said land and hereditaments, of which an undivided third part is hereby granted or intended so to be, or with any person or persons for the time being empowered to concur in a partition of the said land and hereditaments, in making a partition of the said land and hereditaments, or any of them, or any part thereof; And that for the purpose of effectuating any such partition as aforesaid it shall be lawful for the said trustees and trustee for the time being (at such request and direction, or at such discretion as aforesaid) to enter into, make and do all such contracts, assurances, and things as to them or him shall seem reasonable or proper; And also to pay or receive any sum or sums of money for equality of partition; AND ALSO, that upon any such partition as aforesaid the hereditaments which shall be received in lieu of or as a specific allotment for the undivided third part and premises hereby granted or intended so to be, or any of them, or any part thereof, shall be conveyed to the use of the said trustees or trustee for the time being, their or his heirs and assigns, upon and for such and the same trusts and purposes, and with and subject to such and the same powers, provisoes, agreements and declarations (except the power of partition hereinbefore contained), as are in and by these presents expressed or referred to concerning the said undivided third part and premises hereby granted and intended so to be, or as near thereto as the deaths of parties and the other intervening accidents will admit of; And in case, in pursuance of the authority in that behalf hereinbefore contained, the said trustees or trustee for the time being shall receive any sum or sums of money for equality of partition as aforesaid, they or he shall stand possessed thereof upon and for such trusts and purposes, and subject to such powers, provisoes, agreements and declarations, as are hereinbefore expressed or referred to concerning the money to arise from the sale or sales to be made under the authority of these presents; And that in case the said trustees or trustee for the time being shall be required to pay any sum or sums of money for equality of partition, then it shall be lawful for the said trustees or trustee for the time being to raise the same (*a*) by a charge or mortgage of the hereditaments, the entirety whereof shall or may be allotted to them or him in lieu of or

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(*a*) If the trustees are possessed of any stock or personal fund out of which it may be wished that they shall have power to raise all or any such money as is here provided for, that stock or fund will probably be settled by another deed in which the requisite power should be inserted.

PRECDE. XXVII substitution for the said undivided part and hereditaments hereby granted as aforesaid, and at such rate of interest and upon such other terms and conditions as the said trustees or trustee for the time being shall think proper. [*Add Powers to the trustees to lease*, pp. 167, 174, *and Nomination of persons to appoint new trustees*, p. 117.] IN WITNESS, etc.

XXVIII.

ASSIGNMENT *by intended* WIFE *of* LEASEHOLDS *upon* TRUST *to sell and hold* MONEY *on* TRUSTS *declared by Deed of even date* (*a*).

THIS INDENTURE, made the day of , 18 , BETWEEN [*intended wife*] of the first part, [*intended husband*] of the second part, and [*trustees*] of the third part; [*Recitals of intent to marry and title to leaseholds*, above, p. 71.] AND WHEREAS upon the treaty for the said intended marriage it was agreed (among other things) that the said [*intended wife*] should assign and convey the said hereditaments expressed to be demised by the hereinbefore-recited indenture to the said [*trustees*] Upon the trusts and with and subject to the powers, provisoes, agreements and declarations hereinafter expressed concerning the same; NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*intended wife*], with the privity and consent of the said [*intended husband*] and as beneficial owner (*c*), doth by these presents assign and convey unto the said [*trustees*], their executors, administrators and assigns, ALL and singular the messuages and premises comprised in and expressed to be demised by the hereinbefore-recited indenture of lease, as aforesaid, TO HAVE AND TO HOLD the said leasehold tenements and all and singular other the premises hereinbefore expressed to be hereby assigned unto the said [*trustees*], their executors, administrators and assigns, for the residue of the said term of years, subject to the payment of the rent and the performance of the lessee's covenants and conditions in the hereinbefore-recited indenture contained, UPON TRUST for the said [*intended wife*], her executors, administrators and assigns, until the said intended marriage shall be solemnised, and after the solemnisation thereof upon the trusts and with,

Parties (*b*).

Recitals (*b*) of intended marriage, wife's title, and agreement to settle.

Conveyance.

To hold.

(*a*) Treatise, 289—294.
(*b*) As to parties and recitals, see *ib.* 278—284.
(*c*) *Ib.* 320—324.

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under and subject to the powers, provisoes and declarations hereinafter declared and expressed concerning the same; [*Trusts for sale and of proceeds, and Power of leasing*, above, p. 167, and below; *Nominations of persons to appoint New Trustees*, above, p. 117; *Restriction on implied Covenants for Title*, above, p. 23.]

EXTENSIVE POWER OF LEASING, *for insertion in* CONVEYANCE *on* TRUST *for* SALE (*a*).

Power of leasing.

PROVIDED ALWAYS, and it is hereby declared, that after the solemnisation of the said intended marriage and until in performance of the trusts hereinbefore contained the premises hereinbefore granted shall be sold, it shall be lawful for the trustees or trustee of these presents for the time being, with the consent in writing of the said [*intended husband*] and [*intended wife*] during their lives and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the said trustees or trustee for the time being, to demise the hereditaments and tenements subject for the time being to the trust hereby declared or any part or parts thereof, for any term of years absolute or otherwise, and either at rackrent or taking a fine or premium, and either subject or not subject to stipulations as to repairing or building, and to grant any such lease or leases as aforesaid subject to such covenants and conditions, at such progressive or other rents, and otherwise in such manner in all respects as the said trustees or trustee for the time being may think fit, with power for the said trustees or trustee for the time being, but during the lives of the said [*intended husband*] and [*intended wife*] or the life of the survivor of them, with their, his or her consent in writing, to rescind, abandon or vary the terms of any agreement that may have been entered into for any such lease as aforesaid upon such terms and conditions as the said trustees or trustee for the time being may think fit; AND IT IS HEREBY DECLARED that any money to be received as a fine or premium for the granting of any such lease as aforesaid shall be held upon such trusts as are hereinbefore declared or referred to concerning the money to arise from the sale of the premises hereby granted.

(*a*) Above, p. 166.

XXIX.

MARRIAGE SETTLEMENT *whereby in consideration of* WIFE'S FORTUNE *paid to* HUSBAND *on* MARRIAGE *he Covenants for Payment of an* EQUAL SUM *if he become* BANKRUPT (*a*).

THIS INDENTURE, made the day of , 18 , BETWEEN [*intended husband*], of the first part; [*intended wife*], of the second part; and [*trustees*], of the third part: WHEREAS a marriage is intended to be solemnised between the said [*intended husband*] and the said [*intended wife*]; AND WHEREAS the said [*intended wife*] is entitled under the will of the late , which was on the day of last proved by *A* and *B*, the executors therein named, in the Probate Division of the High Court of Justice at the principal registry thereof, to a legacy of £500 sterling clear of legacy duty; AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said legacy of £500 should immediately after the solemnisation of the said intended marriage be paid to the said [*intended husband*] for his own use and benefit absolutely, and that he should enter into the covenant hereinafter expressed to be entered into by him; AND WHEREAS, in order that the said agreement for payment to the said [*intended husband*] may be performed, the said [*intended wife*] has by a writing under her hand directed the said *A* and *B* to pay the said legacy of £500 to the said [*intended husband*] immediately after the solemnisation of the said intended marriage; NOW THIS INDENTURE WITNESSETH that, in pursuance of the hereinbefore-recited agreement in this behalf, and in consideration of the said intended marriage, and also in consideration of the sum of £500, which the said intended husband immediately after the solemnisation of the said intended marriage will receive as and for the marriage portion of the said [*intended wife*] from the said *A* and *B* as such executors as aforesaid, the

Parties (*b*).

Recitals (*b*) of intended marriage,

—of wife's title to legacy.

Agreement to pay to husband.

Direction to pay.

Covenant by the husband

(*a*) As to covenant to pay on bankruptcy, see Treatise, 263; as to covenants to pay money with interest, *ib.* 220—228.

(*b*) As to parties and recitals, see Treatise, 278—284; and as to the operative words in covenants, *ib.* 284—288.

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for payment on his death,

said [*intended husband*] DOTH hereby covenant with the said [*trustees*] that if the said intended marriage shall be solemnised and the said sum of £500 or any part thereof shall be paid to the said [*intended husband*] as aforesaid, Then and in that case, unless such a receiving order as is hereinafter mentioned shall be made, the heirs, executors or administrators of the said [*intended husband*] shall at the expiration of three calendar months next after the death of the said [*intended husband*], and if in the lifetime of the said [*intended husband*] a

or bankruptcy.

receiving order shall be made in bankruptcy for the protection of his estate upon which he shall be adjudged a bankrupt, or any composition in satisfaction of his debts or any scheme or arrangement of his affairs shall be approved by the proper Court (*a*), the said [*intended husband*], his heirs, executors or administrators, will or shall immediately on such receiving order as aforesaid being made pay to the said [*trustees*] or other the trustees or trustee of these presents for the time being, without any deduction whatsoever, the sum of £500 sterling or such smaller sum as shall be equal to the sum which the said [*intended husband*] shall so receive as the marriage portion of

Declaration of the trusts.

the said [*intended wife*] as aforesaid; AND IT IS HEREBY AGREED AND DECLARED that the said trustees or trustee for the time being shall stand possessed of the said sum of £500, or such part thereof as shall be paid to them or him under the covenant last hereinbefore contained, UPON TRUST to invest the same in their or his own names or name, in [*investment and power to vary investments*, p. 109]; And shall stand possessed of the said funds and securities and the dividends, interest and annual produce thereof; [*Add trusts*, above, pp. 110—112, *excluding that for husband, and also adding Trustee clauses*, above, p. 116]. IN WITNESS, etc.

(*a*) These contingencies are described with reference to the existing state of the law (46 & 47 Vict., c. 52, ss. 1, 5, 18, 19, 20, 23). It is impossible to predict how future legislation may affect the operation of the covenant. Possibly some general terms might be discovered which would define with sufficient precision an event in which, whatever changes may be made in the law of bankruptcy, the sum covenanted for should become payable immediately when the law required the obligations of the covenantor to be satisfied. The form in the text does not apply to the contingency of the covenantor's executing or signing a deed or writing which would be a "deed of arrangement" within the meaning of that term in the Deed of Arrangement Act 1887 (50 & 51 Vict., c. 57), which requires such instruments to be registered. If the deed be made immediately payable on the covenantor's executing or signing such an instrument, the trustees should be empowered to concur in it if they should approve its terms.

ADDITIONAL FORMS IN SETTLEMENTS BY WAY OF COVENANT.

A.

COVENANT *to pay* GROSS SUM *after* MARRIAGE, *with* INTEREST *till* PAYMENT, *and Authority to* TRUSTEES *to forbear* PAYMENT (*a*).

AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*covenantor*] should enter into the covenants for the payment of £ and of interest thereon hereinafter contained; NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*covenantor*], with the privity of the said [*intended husband and wife* (*c*)], doth hereby covenant with the said [*trustees*] that if the said intended marriage shall be solemnised the said [*covenantor*], his heirs, executors or administrators, will or shall within six calendar months next after the solemnisation thereof pay to the said [*trustees*] or other the trustees or trustee of these presents for the time being the sum of £ sterling, with interest thereon at the rate of 4 per centum per annum from the day of the solemnisation of the said intended marriage; AND THAT (*d*) if the said intended marriage shall be solemnised, and the said sum of £ shall not be paid within six calendar months next after the solemnisation thereof, the said [*covenantor*], his heirs, executors or administrators, will or shall, until the said sum of £ shall be fully paid, pay to the said [*trustees*] or other the said trustees or trustee for the time being interest for the last-mentioned sum, or for so much thereof as shall from time to time remain unpaid, at the rate of 4 per centum per annum by half-yearly payments, whereof the first shall be made at the end of six calendar months next after the solemnisation of the said intended marriage; PROVIDED ALWAYS, and it is hereby agreed and declared by the parties hereto other than the said [*trustees*], that it shall be

Recital of agreement (*b*).

Covenant for payment (*b*),

and interest until payment.

Power for trustees to refrain from requiring payment.

(*a*) As to covenant to pay on bankruptcy, see Treatise, 263; as to covenants to pay money with interest, *ib.* 220—228.

(*b*) As to parties and recitals, see Treatise, 278—284; and as to the operative words in covenants, *ib.* 284—288.

(*c*) Intended wife only, if the husband be the covenantor.

(*d*) If the husband be the covenantor and also the intended recipient of the interest during his life this covenant may be omitted.

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lawful for the said [*trustees*] and for every (if any) person who may become entitled to sue upon the covenant for payment of the said sum of £ and interest hereinbefore contained to refrain from requiring payment of the last-mentioned sum until after the death of the said [*covenantor* (*a*)], and no trustee or other person entitled, whether jointly with any other trustee or person or solely, to sue upon the last-mentioned covenant shall be responsible for any loss occasioned by the omission to compel or require payment of the said sum of £ during the life of the said [*covenantor*] or within twelve calendar months after his death (*b*).

B.

COVENANT *to pay* SUM *either in* LIFETIME *or after* DEATH *of* COVENANTOR, *with* INTEREST *in the meantime* (*c*).

Covenant for payment (*d*),

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*covenantor*], with the privity of the said [*intended husband and* (*e*) *wife*], doth hereby covenant with the said [*trustees*] that if the said intended marriage shall be solemnised the said [*covenantor*] will at some time or times during his life, or his heirs, executors or administrators shall within twelve calendar months after his death, pay to the said [*trustees*], or other the trustees or trustee of these presents for the time being, the sum of £ sterling,

and interest until payment.

And in the meantime, until the whole of the said sum of £ shall have been so paid as aforesaid, the said [*covenantor*], his heirs, executors or administrators, will or shall pay to the said [*trustees*] or other the said trustees or trustee for the time

(*a*) If the husband enter into the covenant the time of his death will probably be the latest point of time to which he will need, and to which it will be expedient for the beneficiaries, to defer payment. If some other person be the covenantor he may wish to defer payment till his death, but the interests of the beneficiaries may make payment desirable at least so soon as the death of the survivor of the spouses. This must be considered and specially agreed on in every case.

(*b*) This exoneration from responsibility is sometimes extended indefinitely beyond the date until the arrival of which it is intended that payment may be deferred (3 Dav. Conv., 3rd ed., 844); but so to continue the exoneration for more than some specified short period after the time when it is intended that the money shall be paid arrives, seems improper. The trustees ought then to require payment, and must undertake the responsibilities of their office.

(*c*) As to covenant to pay on bankruptcy, see Treatise, 263; as to covenants to pay money with interest, *ib.* 220—228.

(*d*) As to parties and recitals, see Treatise, 278—284; and as to the operative words in covenants, *ib.* 284—288. See note (*d*), p. 177.

being, interest for the said sum of £ , or for so much thereof as shall from time to time remain unpaid, at the rate of 4 per centum per annum, by half-yearly payments, whereof (if any such interest as aforesaid shall accrue) the first shall be made at the end of six calendar months next after the solemnisation of the said intended marriage. FORMS.

C.

TRUST *of* SUM *to be paid declared by reference to the* TRUST *of* PROCEEDS *of* SALE *of* LAND.

AND IT IS HEREBY AGREED AND DECLARED that the trustees or trustee of these presents for the time being shall, when the said sum of £ or any part thereof shall have been received, stand possessed thereof and of the stocks, funds, shares and securities in or upon which, in performance and exercise of the trusts and powers for investment and variation of investment next hereinafter by reference declared, the said sum of £ or the part thereof which shall have been received shall be invested, And the yearly produce thereof respectively, Upon such trusts and with and subject to such powers, provisoes, agreements and declarations as are hereinbefore contained concerning the money to be produced by the sale of the hereditaments which are by the hereinbefore-recited indenture of even date herewith expressed to be conveyed upon trust for sale as aforesaid, and concerning the stocks, funds, shares and securities in or upon which the same money may originally or by variation of investment be invested, and concerning the yearly produce thereof respectively, and as shall then be subsisting and capable of taking effect. Declaration of trust.

D.

TRUST *of* SUM *to be paid declared by* DIRECTION *to* INVEST, *and by reference to* TRUSTS of CONSOLS.

AND IT IS HEREBY AGREED AND DECLARED that the trustees or trustee of these presents for the time being shall, when the said sum of £ or any part thereof shall have been received, and with the consent of the said [*intended husband and wife*] during their joint lives, and of the survivor of them during his Declaration of trust,

Forms.

or her life, and after the death of such survivor at the discretion of the said trustees or trustee for the time being, invest the same sum, or so much thereof as shall have been received, in or upon some of the stocks, funds, shares and securities in or upon which it is hereinbefore declared that the money to be produced by sale of the said sum of £ Consolidated £3 per cent. Annuities may be invested, And shall stand possessed of the stocks, funds, shares or securities in or upon which the said sum of £ or any part thereof may be invested, and the income thereof respectively, Upon such of the trusts, and with and subject to such of the powers, provisoes, agreements and declarations hereinbefore contained, concerning the said sum of £ Consolidated £3 per cent. Annuities, and the money which may be produced by the sale thereof, and the stocks, funds, shares and securities, in or upon which the same money may originally or by variation of investment be invested, and the yearly produce thereof respectively, as shall then be subsisting and capable of taking effect; Save and except that after the death of the said [*intended wife*] the income of the said sum of £ , and of the stocks, funds, shares and securities in or upon which the same may originally or by variation of investment be invested, shall be payable to the said [*intended husband*] and his assigns during his life, And that if there shall not be any issue of the said intended marriage in whom by virtue of the trusts or of the exercise of either of the powers other than the power of advancement hereinbefore contained the said sum of £ Consolidated £3 per cent. Annuities, or the money, stocks, funds, shares or securities into which the same may be converted shall become vested, then subject to and without derogating from the trusts and powers hereinbefore by reference contained and made applicable to the said sum of £ so hereby covenanted to be paid as aforesaid, and the stocks, funds, shares and securities in or upon which the same may be invested, and the yearly produce thereof until such failure of issue of the said intended marriage as aforesaid, the said [*trustees*] shall stand possessed of and be interested in the

by reference.

Exception (*a*). Life interest to husband.

Capital for him in default of issue.

(*a*) If the covenant for payment be entered into by the husband or by some one for his benefit, and the trusts declared by reference are those of the wife's fortune, and the husband take in it only an interest determinable on bankruptcy, the first of these variations must be made. The second is also necessary unless the ultimate trust of the wife's fortune is for the husband. If the covenant be entered into, not by the husband but by some one else for his benefit, it will of course be a matter for the determination of that person whether this ultimate trust shall be for the benefit of the husband or of the covenantor.

said sum of £ hereinbefore covenanted to be paid, and the stocks, funds, shares and securities, in or upon which the same shall originally or by variation of investment be invested, and the subsequent yearly produce thereof, or so much thereof respectively as shall not have been applied under any power herein contained, or under any power conferred by statute, IN TRUST for the said [*intended husband*] absolutely.

E.

COVENANT *to pay* ANNUITY (*a*) *and* TRUST *of it* (*b*), *and* EXONERATION *of* TRUSTEES (*c*).

Recital of agreement.

AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said [*covenantor*] should enter into such a covenant as is hereinafter contained for payment of the annuity of £ hereinafter mentioned; NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*covenantor*], with the privity of the said [*intended husband and wife* (*d*)], doth hereby covenant with the said [*trustees*] that if the said intended marriage shall be solemnised, the said [*covenantor*], his heirs, executors or administrators will or shall, during such time as the said [*covenantor*] and the said [*intended husband and wife*] or either of them, or any issue of the said intended marriage, shall jointly live (*e*), pay to the said [*trustees*] or other the trustees or trustee of these presents for the time being, the yearly sum of £ by half-yearly payments, whereof the first shall be made at the end of six calendar months next after the solemnisation of the said intended marriage; AND IT IS HEREBY AGREED AND DECLARED that the trustees or trustee of these presents for the time being shall from time to time, while the said yearly sum of £ shall be payable, pay and apply the same yearly sum to the person or persons for the purposes and in the manner to, for and in which the income of the said [*sum*

Covenant.

Trust of annuity.

(*a*) See Treatise, 210, 265, 269.
(*b*) *Ib.* 260.
(*c*) *Ib.* 1429.
(*d*) Intended wife only if the husband be the covenantor.
(*e*) The period during which the annuity is to be payable may not in all cases be that here described; but the case here provided for is a common one, in which a father covenants on the marriage of his child for the payment of an annuity until upon his own death some income-yielding property will fall into the possession of the persons entitled to the benefit of the settlement.

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of £ Consolidated £3 per cent. Annuities] would by virtue of the trusts and powers herein contained, or of any exercise of any of the same powers, be for the time being payable or applicable; PROVIDED ALWAYS, and it is hereby agreed and declared, that neither the said [*trustees*] nor either [or any] of them, nor any future trustees or trustee of these presents, shall be bound to enforce the covenant hereinbefore contained for payment of the said yearly sum of £ , unless and except when the person or persons who may for the time being be entitled to the receipt of the said yearly sum shall in writing require the trustees or trustee of these presents for the time being to enforce the same covenant; And no trustee of these presents shall be responsible for any breach of trust by reason of his not having enforced the said covenant except when so required as aforesaid.

Trustee need not compel payment of annuity.

F.

COVENANT *on* MARRIAGE *by* HUSBAND'S FATHER *to leave* HUSBAND *a Share of* COVENANTOR'S ESTATE *equal to that of any other Child* (*a*).

Recital (*b*) of title and agreement.

AND WHEREAS the said [*intended husband's father*] is seised of or entitled to real estates of inheritance of considerable value; and is also possessed of a large personal estate; and on the treaty for the said marriage it was agreed that, by way of making a provision for his son, the said [*intended husband*], and the other objects of the trusts hereinafter referred to, the said [*intended husband's father*] should enter into the covenant hereinafter contained concerning the disposition of his real and personal estates; NOW THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the last-mentioned agreement, and in consideration of the said intended marriage, the said [*intended husband's father*] doth hereby covenant with the said [*trustees*] that, in case the said intended marriage shall be solemnised, the said [*intended husband's father*] will, by his last will and testament, effectually give, devise and bequeath, or the heirs, executors and administrators of him the said [*intended husband's father*] shall, at their own

Covenant (*b*).

(*a*) As to this covenant and the objections to it, see Treatise, 213. In using the trust by reference care must of course be taken to see that the trusts referred to are appropriate to the facts and the intent of the parties.

(*b*) As to recitals, see Treatise, 278—284; as to operative words in covenants, *ib.* 284.

costs and charges, at or before the expiration of three calendar months after his death, effectually assure such part of the real and personal estate to which he shall be entitled at the time of his death as shall be equal at least to the share which any other child of the said [*intended husband's father*], or the issue of any such child, or any other such child and his or her issue conjointly shall have or be entitled to, or shall have had or been entitled to, by gift, devise, bequest, descent, intestacy, or otherwise, of or in such estate or effects, unto and to the use of the trustees or trustee for the time being of these presents, to the intent that they or he may stand seised or possessed thereof and interested therein, upon and for the several trusts, intents and purposes, and with, under and subject to the several powers, provisoes and agreements in these presents, or the indenture of even date herewith, declared and contained concerning the hereditaments thereby granted, or the produce thereof, according to the nature and quality of the said real and personal estate and effects respectively, or such of the same trusts, intents and purposes, powers, provisoes and agreements, as shall then be subsisting or capable of taking effect; PROVIDED ALWAYS, and it is hereby agreed and declared, that every sum of money, or other estate and effects whatsoever, which may at any time or times hereafter be paid or advanced, conveyed or assigned, by the said [*intended husband's father*], unto or for the benefit of any of his children, or the issue of any such children, exceeding in amount or value at any one time the sum of £50 each, or at several times within the space of any one year the sum of £100, shall be deemed part of the share or respective shares of the child or children or issue respectively to whom or for whose benefit the same shall have been paid or advanced, conveyed or assigned as aforesaid, and shall be brought into hotchpot and accounted for accordingly; Nevertheless, it is expressly declared that all and every sums and sum of money, which shall or may be advanced by the said [*intended husband's father*] for the maintenance and education of any child or children or issue respectively, or for the apprenticing him, her or them to any trade, profession or business (*a*), or any property and effects

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Advances to other children to be brought into hotchpot.

Exceptions.

(*a*) This agrees with the rule with respect to advancements under the hotchpot clause in the Statute of Distributions. Some of the questions which covenants of this nature are calculated to produce are excluded by the clauses in the text, but it is too much to expect that all have been comprehended. The insertion of such covenants is not to be recommended. 9 Jarm. By. 433.

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which the said children or issue of any of them shall derive either from any person or persons other than the said [*intended husband's father*], or by or through any power of selection or distribution merely exercised by him the said [*intended husband's father*], shall not be deemed and considered as part of the share or portion or respective shares or portions of such child, children or issue respectively, within the true intent and meaning of the proviso last hereinbefore contained; PROVIDED NEVERTHELESS, and it is hereby agreed and declared, that if, under or by virtue of the covenant hereinbefore contained, any undivided part or share in freehold, copyhold or leasehold messuages, lands or other hereditaments, shall be conveyed or assured to or vested in the trustees or trustee for the time being of these presents, it shall be lawful for the said trustees or trustee for the time being at any time or times thereafter, with the consent in writing of the said [*intended husband*] and [*intended wife*] or the survivor of them, and after the decease of such survivor then at the discretion of the said trustees or trustee for the time being, to concur with the owner or owners of the other undivided share or shares thereof or with the person or persons empowered in respect thereof to join in a partition of the entirety, in making an effectual partition of the said hereditaments, and also to give or pay any sum or sums of money by way of equality of partition, and to execute such conveyances and assurances as shall be requisite and proper for the purpose of carrying such partition or partitions into full and complete effect; And it is hereby further agreed and declared that the hereditaments which shall be allotted to the said trustees or trustee for the time being in severalty, on any and every such partition, shall be subject to the trusts affecting the undivided share or shares in lieu or in respect whereof the same shall have been so allotted; and all and every the sum and sums of money which shall be paid to the trustees or trustee for the time being for equality of partition as aforesaid shall be held by them or him upon the trusts hereinbefore declared concerning the money to be produced by sale of the real estate conveyed to the said trustees or trustee for the time being by the hereinbefore-recited indenture of even date herewith, or such of them as shall be then subsisting or capable of taking effect (*a*). IN WITNESS, etc.

Power to concur in partition.

(*a*) See another form and notes, above, pp. 170, 171.

SEPARATION DEEDS (*a*).

XXX.

DEED OF SEPARATION *whereby the* HUSBAND *covenants to pay* ANNUITY *to* WIFE (*b*), *and that she may have certain* CHATTELS.

THIS INDENTURE, made the day of , 18 , BETWEEN [*the husband*] of the first part, [*the wife*] of the second part, and [*the trustee*] of the third part: WHEREAS, unhappy differences having arisen between the said [*husband*] and [*wife*], they have agreed that they will live separately, and that they and the said [*trustee*] shall respectively enter into the covenants by them respectively hereinafter contained; NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the covenants by the said [*wife*] and [*trustee*] respectively hereinafter contained, the said [*husband*] doth hereby covenant with the said [*wife*], and also as a separate covenant with the said [*trustee*], that the said [*wife*] may at all times hereafter live separately from the said [*husband*] as if she were not married, and not subject to his control or authority; AND THAT the said [*husband*] will not molest or disturb the said [*wife*] or endeavour by any means to compel her to cohabit or live with him, or begin or continue to prosecute any action for restitution of his conjugal rights, AND WILL NOT sue or prosecute any person or persons for receiving, lodging or protecting her; AND FURTHER, THAT the said [*husband*] will yearly, during the joint lives of himself and the said [*wife*], if they shall so long continue to live separately from each other, pay to the said [*wife*] for her sole and separate use, but not by way of anticipation, one clear annuity or yearly sum of £ sterling in quarterly portions, on the 25th day of March, the 24th day of June, the 29th day of

Parties (*c*).

Recital (*c*) of agreement for separation.

Covenant (*d*) by husband against molestation,

and for payment of annuity.

(*a*) See "Of Separation Deeds," Treatise, 1438—1459.
(*b*) *Ib.* 210.
(*c*) As to parties and recitals, *ib.* 278—284.
(*d*) As to operative words in covenants, *ib.* 284.

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September, and the 25th day of December in every year, without any deduction except for property or income tax; the first quarterly portion of the said annuity to be paid on the day of now next ensuing (*a*). PROVIDED ALWAYS, and it is hereby agreed and declared, that so long as the said [*wife*] shall reside and live with her father the said [*trustee*] the said annuity or yearly sum of £ shall be paid to the said [*trustee*] at the times and in manner aforesaid in trust for the said [*wife*], and the receipt of the said [*trustee*] signed with his own proper hand shall be a good and sufficient discharge for so much of the said annuity or yearly sum of £ as shall be therein acknowledged or expressed to be received, and that the said [*husband*] shall not be bound to see to the application thereof (*b*); AND the said [*husband*] doth also covenant with the said [*wife*] that the said [*wife*] may retain and dispose of as her own separate property all the articles of dress and personal ornament belonging to the said [*husband*] now in her possession, and also the articles of furniture which are specified in the schedule hereto, and which the said [*husband*] has delivered to the said [*wife*] as she doth hereby acknowledge (*c*); AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement, and in consideration of the covenants by the said [*husband*] hereinbefore contained, the said [*wife*], and also as a separate covenant the said [*trustee*], doth hereby covenant with the said [*husband*] THAT the said [*wife*] shall not at any time hereafter molest the said [*husband*], and shall not in any manner compel or endeavour to compel him to cohabit with her, or compel or attempt to compel him

Trustee's receipt.

Chattels.

Covenant by wife against molestation,

(*a*) Variation for the case of the husband covenanting to pay a weekly sum: "that the said [*husband*] will during the joint lives of himself and the said [*wife*], if they shall so long live separately from each other, pay to the said [*wife*], her executors, administrators or assigns for her sole and separate use, but without power of anticipation, the clear annual sum of £78, by equal weekly payments made on every Saturday in every year commencing on the day of next."

(*b*) This clause, taken from 9 Jarm. By. 553, though not adapted to universal use, or to be inserted without instructions, may in many cases and with or without modification be found useful.

(*c*) The delivery of possession of the chattels should precede the execution of the deed. A covenant by the husband to deliver them may give "a right in equity" to them (41 & 42 Vict., c. 31, s. 4) and require registration of the deed as a bill of sale (*ib* s. 8) in order that it may be valid against the creditors of the covenantor in that section specified. The deed, however, not being one to which the Bills of Sale Act of 1882 relates, would without registration be valid against the covenantor himself and other claimants under him.

(*d*) As to operative words in covenants, see Treatise, 284.

to allow her any support, maintenance or alimony other than the said annual sum of £ . AND FURTHER, that the said [*trustee*], his heirs, executors or administrators, will or shall at all times hereafter keep indemnified the said [*husband*], his heirs, executors and administrators, and his and their estates and effects, against all the debts and liabilities which the said [*wife*] has already contracted or incurred or shall hereafter contract or incur, and against all actions, accounts, claims and demands, costs, losses, damages and expenses for, upon account or in respect of such debts and liabilities or any of them or anything in anywise relating to the premises; PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*husband*] and [*wife*] shall be reconciled to each other and cohabit together, or if their marriage shall be dissolved by any Court of competent jurisdiction in respect of anything done or suffered by either party after the execution of these presents, then and in either of the said cases the covenants and provisions herein contained shall thenceforth be void except in respect of any act previously done, and of proceedings for a breach previously committed, of all or any of the said covenants and provisions; AND THAT no proceedings shall be commenced or prosecuted by or on behalf of either of them the said husband and wife against the other of them in respect of any cause of complaint which now exists or has arisen before the date hereof, and every offence (if any) which has been committed or permitted by either of them against the other shall be considered as hereby forgiven and condoned; and in case hereafter either of them shall commence or prosecute any proceedings against the other of them in respect of any cause of complaint which may hereafter arise, no offence or misconduct which has been committed or permitted before the execution of these presents, and no act, deed, neglect or default of either of them in relation to any such offence or misconduct, shall be pleaded or alleged by either of them, or be admissible in evidence; IN WITNESS, etc.

and for indemnity.

Provision for reconciliation or divorce.

Condonation of previous offences (*a*).

THE SCHEDULE which is referred to in the above-written Indenture.

(*a*) A covenant of this kind was under consideration in *Rose* v. *Rose*, 7 P. D. 225; 8 P. D. 98; Treatise, 1454. It is not one implied in a separation deed (*Moore* v. *Moore*, 12 P. D. 193, below, p. 300), and should not be inserted without instructions.

XXXI.

DEED OF SEPARATION *between* HUSBAND *and* WIFE. *The* HUSBAND *gives up to the* WIFE *certain* EFFECTS, *and resigns to her the* CUSTODY *of their* CHILD (*a*). APPOINTMENT *by* WIFE *to the* HUSBAND *of a* LIFE INTEREST, *determinable on his* BREACH *of* COVENANT, *in a Moiety of a* TRUST FUND, *over which she has a general disposing Power. Usual* COVENANT *of* INDEMNITY *by the Wife's* TRUSTEE.

Parties. THIS INDENTURE, made the day of , 18 , BETWEEN [*husband*], of etc., of the first part; [*wife*], of etc., wife of the said [*husband*], of the second part; and [*trustee*], of etc. (the brother of the said [*wife*]), of the third part. [*Recite marriage settlement, whereby £3000 Reduced £3 per centum Annuities, standing in the names of trustees, was settled in trust for such persons as the wife, by deed or will, shall appoint: differences subsisting, and agreement to live separately,* above, p. 185]. NOW THIS INDENTURE WITNESSETH,

Covenant (*b*) by husband for separation, that, in pursuance of the said agreement, the said [*husband*] doth hereby covenant with the said [*trustee*] in manner following, that is to say, that [*covenant by the husband that the wife may live separate*, p. 185]; and will not without the consent of the said [*wife*] visit her, or knowingly come into any house or place where she shall or may dwell, reside, or be, or send or

and for custody of infant (*a*), cause to be sent any letter or message to her (*c*), or at any time hereafter attempt or endeavour to remove [*name*] an infant of the age of years, the child of the said [*husband*] and [*wife*], from the custody, care and control of the said [*wife*], or in any manner to interfere with the education of the said [*child*], but will permit the said [*child*], at all times hereafter, to live with the said [*wife*], or such other person or persons as she shall appoint, the said [*wife*] taking upon her-

(*a*) As to the paternal right to the custody of children and its modern statutory modifications, see Treatise, 1454.

(*b*) As to operative words in covenants, see Treatise, 284.

(*c*) This addition makes a more explicit covenant against molestation than that at p. 185.

self the charges and expenses of maintaining and educating the said [*child*]; AND ALSO, that the household furniture, plate, china, glass, linen, trinkets, and wearing apparel, which, previously to the execution of these presents, have been delivered up to and placed in the possession of the said [*wife*], shall be and remain to and for the sole and separate use of the said [*wife*]; AND THIS INDENTURE FURTHER WITNESSETH that, in consideration of the covenants by the said [*husband*], hereinbefore contained, and in exercise and by virtue of the power and authority so as aforesaid reserved to the said [*wife*] by the hereinbefore-recited indenture of settlement, and of all other powers and authorities enabling her in this behalf, the said [*wife*] DOTH, by these presents, irrevocably direct and appoint that, from and immediately after the execution of these presents, all and singular the dividends, interest and annual produce arising from one moiety or equal half part of the said sum of £3000 Reduced £3 per centum Annuities, and of any other stocks, funds or securities on which the proceeds thereof shall for the time being happen to be invested, shall remain, belong and be payable to the said [*husband*] during his life, subject nevertheless to the proviso hereinafter contained; PROVIDED ALWAYS, and it is hereby agreed and declared, and particularly the said [*wife*] doth direct and appoint, that in case the said [*husband*] shall at any time or times hereafter make or commit any breach or default in the performance or observance of any or either of the covenants and agreements on his part and behalf hereinbefore contained, then, and in such case, and immediately thereupon, the direction and appointment hereinbefore contained shall be absolutely null and void to all intents and purposes whatsoever, and the said dividends, interest and annual produce shall thenceforth go and be payable to the person or persons who would have been entitled thereto if these presents had not been made, anything hereinbefore contained to the contrary notwithstanding; AND (*a*) each of them the said [*wife*] and the said [*trustee*] (at the request and on behalf of the said [*wife*]) doth hereby covenant with the said [*husband*] that the said [*wife*] shall not at any time or times hereafter commence or institute any action against the said [*husband*] to compel the restitution of conjugal rights, or enforce the payment or allowance of alimony, and shall not

and as to chattels.

Appointment by the wife of life interest.

Avoidance on breach of covenant by husband.

Covenant by wife and trustee against molestation,

(*a*) See above, p. 186. The name of the wife can be omitted here as a covenanto f the parties think fit. Treatise, 1445.

PRECED. XXXI.

in any other manner molest, trouble or disturb the said [*husband*], or without his consent visit him, or knowingly go or come into any house or place where he shall or may dwell, reside, or be, or send or cause to be sent any letter or message to him, or knowingly or wilfully hurt or damage his person, estate or effects; AND FURTHER, that the said [*trustee*], his heirs, executors or administrators, will or shall at all times hereafter effectually keep harmless and indemnified the said [*husband*], his heirs, executors and administrators, from and against all loss, costs, charges, damages and expenses whatsoever, on account or by reason of any debt or debts, or other act, matter or thing whatsoever hereafter to be contracted (*a*), done, or committed by the said [*wife*], under the powers and authorities herein contained or otherwise, or to be occasioned by or with her default, privity, means or procurement, or on account or by reason of the board, lodging, maintenance and education of the said [*child*], the costs and expenses whereof it is intended and agreed between the said parties shall be exclusively paid and borne by the said [*wife*] out of her separate estate; IN WITNESS, etc. (*b*).

and for indemnity.

(*a*) It will be observed that the indemnity is here confined to future debts, and the covenant is in other respects less extensive than the covenant in the last precedent. 9 Jarm. By. 560.

(*b*) Notice of this deed should be given to the trustees of the marriage settlement.

APPOINTMENTS OF NEW TRUSTEES (*a*).

XXXII.

APPOINTMENT *by endorsement on the* SETTLEMENT *of* NEW TRUSTEE *of* STRICT SETTLEMENT *of* LAND *where for some of the Hereditaments originally settled Others had been substituted.*—ASSIGNMENT *of* JOINTURE TERM (VARIATION *for* CONVEYANCE *of* ESTATES *pur autre vie vested in* TRUSTEES), *and* COVENANT *to* SURRENDER COPYHOLDS.

THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*donees of the power*], of the first part; the within-named [*existing trustees of whom one is to retire*], of the second part; and [*the new trustee*] of the third part (*b*): [*Recitals showing the surrender of copyholds to the use and the admittance of the original trustees and the acts by means of which for some originally settled freeholds others had been substituted*]. WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the within-written indenture thereby reposed in him jointly with the said [*continuing trustees*], and the said [*appointors*] are desirous of appointing the said [*new trustee*] to be a trustee in the stead of the said [*retiring trustee*], and the said [*new trustee*] has consented to become such a trustee accordingly; NOW THIS INDENTURE WITNESSETH that, in order to effectuate the said desire, and in exercise and by virtue of the power vested in the said [*appointors*] for this purpose by means of the within-written indenture and of the Conveyancing and Law of Property Act 1881 (*c*), and of every other power or authority enabling them in this behalf, the said [*appointors*] do hereby appoint the said [*new trustee*] to be a trustee in the stead of the said [*retiring trustee*]

Parties.

Recital of desire to be discharged.

Appointment of new trustee.

(*a*) See Treatise, 1357—1382.

(*b*) If the settlement was made in consideration of marriage, state the solemnisation of the marriage; below, p. 195. As to supplemental deeds, see below, p. 275.

(*c*) Treatise, 1359.

PREC. XXXII.

and jointly with the said [*continuing trustees*] for the purposes still unaccomplished and capable of being carried into effect for which the said [*retiring trustee*] became a trustee by virtue of the within-written indenture; AND THIS

Assignment of terms.

INDENTURE ALSO WITNESSETH, that in obedience to the directions in this behalf in the within-written indenture and in the said Act contained, the said [*retiring and continuing trustees*] as trustees (*a*) Do and every of them as a trustee (*a*) DOTH assign and convey unto the said [*continuing and new trustees*] and their executors and administrators ALL AND SINGULAR the manors, etc., and other hereditaments which by virtue of the within-written indenture or by any other means now stand limited to the uses which in and by the within-written indenture were limited and declared of and concerning the hereditaments thereby settled and are now

To hold

subsisting and capable of taking effect, TO HAVE AND TO HOLD the premises hereinbefore expressed to be hereby (*b*) assigned unto the said [*continuing and new trustees*], their executors, administrators and assigns, subject to such of the uses and powers by the within-written indenture limited and made capable of being exercised in priority to the within-mentioned term of 500 years as are still subsisting and capable of taking effect or being exercised, and also subject to all estates or uses limited in exercise of any such powers for and during the residue of the said term of 500 years during which by virtue of the within-written indenture or by any other means, the premises now stand limited to the use of the said [*continuing and retiring trustees*], their executors, administrators and assigns,

On trusts of settlement.

and upon, with and subject to all the trusts, powers and provisoes expressed in the within-written indenture, and upon, with and subject to which the premises are now vested in the said [*continuing and retiring trustees*] (*c*). AND THIS INDEN-

(*a*) Below, p. 251.

(*b*) If, as may still occasionally happen, estates to preserve contingent remainders or estates for the lives and the benefit of female beneficiaries are vested in the trustees, use in the operative part the word "grant" instead of the word "assign," and the words "[*new trustee*] and his heirs" instead of the words "[*continuing and new trustees*], their executors, administrators and assigns," and after the word "hereby" in the text continue the habendum as follows, instead of as in the text:

"granted, with their rights, members and appurtenances, unto the said [*new trustee*] and his heirs, TO THE USES, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisoes and declarations to, upon,

TURE ALSO WITNESSETH that in obedience to the directions in this behalf in the within-written indenture and the said Act contained the said [*retiring and continuing trustees*] as trustees (*a*) do hereby covenant with the said [*new trustee*] that the said [*retiring and continuing trustees*] and all other necessary persons will and shall at the cost of the said [*continuing and new trustees*], their heirs and assigns, effectually surrender into the hands of the lord or lady of the manor of , according to the custom thereof, all the copyhold or customary messuages, dwelling-houses or tenements, buildings, lands and hereditaments which, pursuant to the covenant in that behalf contained in the within-written indenture of settlement, were so surrendered as aforesaid, and to which the said [*retiring and continuing trustees*] were admitted tenants at the court of the said manor holden on the said day of , 18 , as hereinbefore mentioned, And also all other the copyhold or customary hereditaments (if any) now vested in the said [*retiring and continuing trustees*] as trustees of the same indenture to the use of the said [*continuing and new trustees*], their heirs and assigns, subject to the rents, fines, suits and services therefor due and of right accustomed, Nevertheless upon such of the trusts, PREC. XXXII. Covenant to surrender copyholds.

for, with, under and subject to which the same premises would by virtue of the within-written indenture now stand limited and settled and be subject if all the same premises had been by the within-written indenture settled to the uses which in and by the same indenture were limited and declared of and concerning the freehold hereditaments thereby settled and if the said [*new trustee*] had by the within-written indenture been appointed a trustee thereof and his name had been inserted therein as a trustee instead of the name of the said [*original trustee in whose stead the new trustee is appointed*], and the same premises instead of being thereby limited to the use of the said [*original trustees*], their heirs and assigns, for the respective lives mentioned in the within-written indenture had been thereby limited to the use of the said [*continuing trustee and new trustee*], their heirs and assigns, for such respective lives as aforesaid, and the powers limited by the within-written indenture of settlement to the said [*original trustees*] and the survivor of them and the executors or administrators of such survivor had been therein and thereby limited to the said [*continuing trustee and new trustee*], and the survivor of them and the executors or administrators of such survivor.

(*a*) Below, p. 251.

PREC. XXXII. and to and for such of the intents and purposes, and with and subject to such of the powers, provisoes, declarations and agreements expressed and declared concerning the same by the within-written indenture as are still subsisting unaccomplished and capable of taking effect; IN WITNESS, etc.

XXXIII.

APPOINTMENT, *by* INDORSEMENT, *of* NEW TRUSTEES.—REVOCATION *and* APPOINTMENT *of* USES *of* FREEHOLDS.—ASSIGNMENT *of* LEASEHOLDS.

THIS INDENTURE, made the day of , 188 , BETWEEN [*husband on whose marriage the settlement had been made*] of the first part, [*executors of last surviving but now deceased trustee*] of the third part: WHEREAS shortly after the date and execution of the within-written indenture the marriage therein stated to be intended was duly solemnised; AND WHEREAS the within-named Mary A. S. (*a*), who at the date of the within-written indenture was and was therein described as Mary A. R., spinster, died on the day of , 18 [*recitals of deaths of original trustees, will of survivor, and probate by parties of second part*]; AND WHEREAS the said [*husband*] is desirous of appointing the said [*new trustees*] to be trustees for the purposes of the within-written indenture in the places of the within-named [*original trustees*]; NOW THIS INDENTURE WITNESSETH that in exercise of the power for this purpose, which by virtue of the within-written indenture is, in the events which have happened, vested in the said [*husband*], and of every or any other power in anywise enabling him in this behalf, the said [*husband*] doth hereby appoint the said [*new trustees*] to be trustees in the places of the said [*original trustees*] [for the purposes still unaccomplished and capable of being carried into effect for which the said (*original trustees*) became trustees by virtue of the within-written indenture (*b*)];

Parties.

Recital of marriage,

death of wife,

devolution of trust estate,

desire to appoint.

Appointment of new trustees.

(*a*) This lady was the wife on whose marriage the within-written settlement had been made. A power to appoint new trustees had been given by it to the husband and wife and the survivor of them, together with the power of revoking the subsisting uses and appointing such new ones as it might be expedient to appoint in order to enable the new trustees to perform their duties. Though such a power would not now be employed, an old one of this kind is occasionally met with, and may need to be exercised: see Treatise, 1277.

(*b*) The words in square brackets may be omitted unless the settlement intrusted several sets of trustees with different functions; those appointed by this deed succeeding to the duties of one of those sets only.

PREC. XXXIII. AND THIS INDENTURE ALSO WITNESSETH that in obedience to the direction in this behalf contained in the within-written indenture, and in exercise of the power by the within-written indenture for this purpose given to the said [*husband*], and of every or any other power in anywise enabling him in this behalf, the said [*husband*] DOTH HEREBY REVOKE all the uses, trusts, powers, provisoes and declarations which were in and by the within-written indenture limited, declared and expressed of or concerning, and are now subsisting or capable of taking effect in the freehold messuages, land and hereditaments by the within-written indenture expressed to be granted to the said [*original trustees*] and their heirs, to the uses and in the manner in the within-written indenture mentioned, AND DOTH HEREBY APPOINT the same freehold messuages, land, hereditaments and premises, TO THE USES, upon the trusts, and with and subject to the powers, provisoes and declarations to, upon, with and subject to which the same freehold messuages, land, hereditaments and premises would now by virtue of the within-written indenture stand and be limited or settled in case this indenture had not been executed, and the said [*new trustees*] had been originally trustees to uses in and under the within-written indenture instead of the said [*original trustees*], and the names of the said [*new trustees*] had in the within-written indenture been inserted throughout, instead of the names of the said [*original trustees*]; AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the direction in this behalf contained in the within-written indenture, the said [*executors*] as trustees (*b*) do and every of them as a trustee (*b*) doth hereby assign unto the said [*new trustees*], their executors, administrators and assigns, ALL such of the leasehold messuages, lands and tenements, with their rights, members and appurtenances expressed to be assigned by the within-written indenture to the said [*original trustees*], their executors, administrators and assigns as such trustees as aforesaid, as by the within-written indenture are stated to have been demised for terms of years which have not yet expired, and are now vested in the said [*executors*] as aforesaid, To

Revocation of uses,

and appointment.

Assignment of leaseholds (*a*).

(*a*) In a case in which one or more existing trustees continue to act, he or they, alone or together with the retiring trustees or trustee if there be any, can assign trust leaseholds to themselves and the new trustee or trustees (22 & 23 Vict., c. 35, s. 21) to hold jointly (44 & 45 Vict., c. 41, s. 50).

(*b*) Below, p. 251.

HAVE AND TO HOLD the said leasehold messuages, lands and tenements, and all other the premises hereinbefore expressed to be hereby assigned unto the said [*new trustees*], their executors, administrators and assigns; Upon the trusts and with and subject to the powers, provisoes and declarations upon, with and subject to which the same leasehold messuages, lands and tenements would now by virtue of the within-written indenture be held respectively in case this indenture had not been executed, and the said [*new trustees*] had been originally trustees in and under the within-written indenture instead of the said [*original trustees*], and the names of the said [*new trustees*] had accordingly been inserted throughout the within-written indenture instead of the names of the said [*original trustees*]; IN WITNESS, etc.

XXXIV.

APPOINTMENT, BY INDORSEMENT *and in succession to* TRUSTEES *appointed by a previously indorsed* DEED, *of two New* TRUSTEES *of* LAND *vested in the* TRUSTEES *in* FEE—*the Appointment being made by the* SURVIVOR *of a* HUSBAND *and* WIFE *who and the* SURVIVOR *of whom had been nominated as the persons to exercise the* STATUTORY POWER (*a*).

Parties. THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*appointor*] of the first part, the above-named [*three existing trustees who had been appointed by a previously indorsed deed, of whom two are to retire*] of the

Recital of death of donee, second part, and [*two new trustees*] of the third part: WHEREAS the within- and above-named [*husband of the appointor who while living was empowered with her to appoint*] died on the

—and of desire to appoint. day of , 18 ; AND WHEREAS the said [*retiring trustees*] are desirous of being discharged from the trusts by the within-written indenture declared, and the said [*appointor*] is desirous of appointing the said [*new trustees*] to be trustees of the said trusts in the place of the said retiring trustees, and the said [*new trustees*] have consented to become such

Appointment of new trustees. trustees as aforesaid accordingly; NOW THIS INDENTURE WITNESSETH that in order to effectuate the said desire, and in exercise and by virtue of the power for this purpose vested in the said [*appointor*] by virtue of the within-written indenture, the death of the said [*husband of the appointor*], and the Conveyancing and Law of Property Act 1881, and of every other power or authority enabling her in this behalf, the said [*appointor*] doth hereby appoint the said [*new trustees*] to be trustees in the place of the said [*retiring trustees*] and jointly with the said [*continuing trustee*], for the purposes still unaccomplished and capable of being carried into effect for which the said [*retiring trustees*] became

(*a*) See this power, Treatise, 1359, 1363; as to a nomination made while Lord Cranworth's Act was in operation, *ib.* 1365.

trustees by virtue of the within- and above-written indentures; AND THIS INDENTURE ALSO WITNESSETH that, in obedience to the direction in this behalf in the said Act contained, the said [*retiring and continuing trustees*] as trustees do and every of them as a trustee doth hereby grant and convey unto the said [*new trustees*] and their heirs ALL AND SINGULAR, etc., TO HOLD the said hereditaments and all and singular other the premises unto the said [*new trustees*] and their heirs, To the use of the said [*continuing and new trustees*], their heirs and assigns, UPON SUCH of the trusts, and to and for such of the intents and purposes, and with and subject to such of the powers, provisoes, agreements and declarations expressed and declared concerning the same in and by the within-written indenture as are still subsisting and capable of taking effect; IN WITNESS, etc.

Conveyance of lands.

To hold

on the trusts of the settlement.

XXXV.

APPOINTMENT *by* INDORSED DEED *of* NEW TRUSTEES *of a* MARRIAGE SETTLEMENT *of* LAND, CHATTELS, *and* POLICY *of* INSURANCE, *the* APPOINTMENT *being made by the* HUSBAND *and* WIFE *after the Deaths and in the places of all the* ORIGINAL TRUSTEES, *and the* ESTATE, INTEREST *and* RIGHT *transferred by Declaration under* 44 & 45 *Vict. c.* 41, *s.* 34 (*a*).

Parties. THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*husband*] and [*wife*] his wife, who at the date of the within-written indenture was and was therein described as spinster, of the one part, and [*new trustees*] of the other part: [*Recitals of marriage, deaths of trustees, and desire to appoint new trustees*, above, p. 195]; NOW THIS INDENTURE WITNESSETH [*appointment of new trustees*, above, p. 195.]

Declaration of vesting. AND THIS INDENTURE ALSO WITNESSETH that, in obedience to the directions in this behalf in the Conveyancing and Law of Property Act 1881 contained, and in exercise and by virtue of the power vested in them for this purpose by means of the within-written indenture and of the said Act of Parliament and of every other power or authority enabling them in this behalf, the said [*husband and wife*] do hereby declare that the estate in the hereditaments in the within-written indenture described and expressed to be thereby granted which was by that indenture vested in the said [*original trustees*], and the interest in the chattels in the within-written indenture described and expressed to be thereby assigned which was by that indenture vested in the said [*original trustees*], and the interest in the policy of assurance in the within-written indenture described and expressed to be thereby assigned which was by that indenture vested in the said [*original trustees*], and the right thereby also vested in them to recover and to receive the sum of £ , and all other money which is now or shall hereafter become capable of being

(*a*) Treatise, 1376.

recovered from the within-mentioned Insurance Company, shall vest in the said [*new trustees*] as joint tenants and for the purposes of the trusts now by virtue of the within-written indenture applicable to the premises respectively; IN WITNESS, etc. PREC. XXXV.

XXXVI.

APPOINTMENT *by* SEPARATE DEED *and by* SOLE TRUSTEE *of* THREE NEW TRUSTEES *of* CONSOLS.

Parties.

THIS INDENTURE, made the day of , 1884, BETWEEN [*retiring trustee*], of , of the one part, and [*new trustees*] of the other part:

Recital of settlement,

WHEREAS by an indenture bearing date the day of and expressed to be made between *I J* and *K* his wife of the one part and the said [*retiring trustee*] of the other part, it was agreed and declared that the said [*retiring trustee*] would stand possessed of the sum of £ Consolidated £3 per centum Annuities then standing in the name of the said [*retiring trustee*], in the books of the Governor and Company of the Bank of England, upon trust to pay the dividends or income thereof to the said *K* during her life, and after her decease upon trust to pay the dividends or income thereof unto *L M*, the wife of *M*, during her life for her sole and separate use, and so that she should have no power to anticipate the same, and after her decease upon trust as in the said indenture was expressed;

—of death of wife,

AND WHEREAS the said *K* is now dead,

—of desire to appoint,

AND WHEREAS the said [*retiring trustee*] desires to be discharged from the trusts and powers reposed in and conferred on him by the hereinbefore-recited indenture, and is desirous of appointing the said [*new trustees*] to be trustees of the hereinbefore-recited indenture in his place;

—of intended transfer.

AND WHEREAS it is intended that the said [*retiring trustee*] shall immediately hereafter transfer the said sum of £ Consolidated £3 per centum Annuities which are still standing in his name in the books of the Governor and Company of the Bank of England into the joint names of the said [*new trustees*], in the said books;

Appointment of new trustees.

NOW THIS INDENTURE WITNESSETH that in exercise of the power for this purpose by statute (*a*) given to the said [*retiring trustee*], and of every or any other power in anywise enabling him in this behalf, the said [*retiring trustee*] doth hereby appoint the said

(*a*) Treatise, 1359, 1366, 1367, 1369.

[*new trustees*] to be trustees of the hereinbefore-recited indenture in the stead of the said [*retiring trustee*] for all the purposes of the said indenture; AND IT IS HEREBY AGREED AND DECLARED that the said [*new trustees*] shall stand and be possessed of and interested in the said sum of £ Consolidated £3 per centum Annuities, when the same shall have been transferred into the names of the said [*new trustees*] as aforesaid, and of and in the dividends thereof; UPON THE TRUSTS and with and subject to the powers, provisoes and declarations now applicable thereto by virtue of the hereinbefore-recited indenture; IN WITNESS, etc. (*a*).

PREC. XXXVI.

Declaration of trust.

(*a*) The transfer of the stock should not precede but immediately follow the appointment: Treatise, 1378. As to the use of supplemental deeds, see below, p. 275.

XXXVII.

APPOINTMENT *by* INDORSEMENT *of* NEW TRUSTEES *and* ASSIGNMENT *of* LEASEHOLD MESSUAGE *held upon* TRUST *for* SALE (*a*).

Parties. THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*husband*] and [*wife*] (who at the date of this within-written indenture was and is therein described as spinster), of the first part; the within-named [*original trustees*], of the second part; and [*new* Recitals. *trustees*], of the third part: [*Recitals of solemnisation of marriage, and of desire of trustees to be discharged*, above, pp. 195, 191.] AND WHEREAS the said [*husband and wife*] are desirous of appointing the said [*new trustees*] to be trustees Appointment of new trustees. thereof in the place of the said [*original trustees*], NOW THIS INDENTURE WITNESSETH that in exercise of the power vested in them by virtue of the within-written indenture and the Conveyancing and Law of Property Act 1881 (*b*), and of every or any other power in anywise enabling them in this behalf, the said [*husband and wife*] do hereby appoint the said [*new trustees*] to be trustees in the place of them the said [*original trustees*] for the purposes of the within-written inden- Assignment of leaseholds ture; AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the direction in this behalf in the said Act of Parliament contained the said [*original trustees*] as trustees (*c*) do and each of them as a trustee (*c*) doth hereby assign and convey unto the said [*new trustees*], their executors, administrators and assigns, ALL, etc. [*parcels*] demised by the within-recited indenture of the day of , 18 ; TO HAVE AND TO HOLD all and singular the premises hereinbefore expressed to be hereby assigned unto the said [*new trustees*], their executors, administrators and assigns, for all the residue now to come of the within-mentioned term of ninety-seven years granted

(*a*) The deed creating that trust and on which this is indorsed recited the lease for ninety-seven years of the heraditaments which it assigned upon trusts for sale.

(*b*) It is assumed that the settlement on which this deed is indorsed nominated the husband and wife as the persons to exercise the statutory power (Treatise, 1359, 1363).

(*c*) Below, p. 251.

by the within-recited indenture of the day of , subject to the payment of the rent and the performance of the covenants by and in that indenture reserved and contained, and by the lessee, his executors, administrators and assigns, to be paid and performed respectively, And upon the trusts and with and subject to the powers, provisoes and declarations subsisting therein and applicable thereto by virtue of the within-written indenture; IN WITNESS, etc. PREC. XXXVII.

XXXVIII.

APPOINTMENT *by* INDORSEMENT *of* NEW TRUSTEES *of a* SETTLEMENT *of* MORTGAGE MONEY *and* MONEY *to be Produced by* SALE *of* LEASEHOLDS.

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*husband*] and [*wife*] (who at the date of the within-written indenture was and is therein described as spinster), of the first part; the within-named [*original trustees*], of the second part; and [*new trustees*] of the third part: [*Recital of solemnisation of marriage*, p. 195.]

Recital of state of trust funds invested on mortgage,

AND WHEREAS the within-mentioned interest of the said [*wife*] was subsequently to the date of the within-written indenture realised and is now represented by a sum of £ , together with interest for the same after the rate of per centum per annum from the day of , which is now subject to the trusts by the within-written indenture declared concerning the said interest of the said [*intended wife*], and which sum of £ with interest thereon after the rate aforesaid is secured by way of mortgage upon certain leasehold hereditaments situate at by an indenture of mortgage bearing date the day of and made between of the one part and the said [*original trustees*] of the other part;

—and of the leaseholds,

AND WHEREAS the leasehold hereditaments comprised in and expressed to be assigned by the within-recited indenture of even date with the within-written indenture still remain unsold;

—and of the absence of other or after-acquired property (*a*),

AND WHEREAS the said [*wife*] was not at the date of the within-written indenture, and has not since, nor has the said [*husband*] in her right, at one and the same time and from the same source become seised or possessed of or entitled to real or personal property of the value of £100 or upwards for any estate or interest whatsoever in possession, reversion, remainder or expectancy, except as within mentioned, and except the within-mentioned interest of the said [*wife*] in the estate devised

(*a*) The settlement contained a covenant for the settlement of other and after-acquired property of the wife.

and bequeathed by the will of her father as within mentioned, and except the said leasehold messuage and hereditaments expressed to be assigned by the said within-recited indenture as aforesaid; [*Recitals of desire of original trustees to be discharged, and of husband and wife to appoint new trustees*, above, p. 191.] AND WHEREAS by an indenture intended to bear even date with and to be executed immediately after the execution of these presents, and to be made between the said [*original trustees*] of the one part and the said [*new trustees*] of the other part, it is intended that the said [*original trustees*] shall assign unto the said [*new trustees*], their executors, administrators and assigns, the said mortgage debt of £ so owing on the hereinbefore-mentioned security for the same as aforesaid and the interest due and henceforth to become due for the same and the benefit of the covenants in the said indenture of mortgage contained, [And it is also intended that by the indenture now in recital the said (*original trustees*) shall assign unto the said (*new trustees*), their executors, administrators and assigns, the messuage, garden and appurtenances described in or expressed to be demised by the said indenture of mortgage and to be assigned by the hereinbefore-mentioned indenture of the day of respectively, To hold unto the said (*new trustees*), their executors, administrators and assigns, jointly for all the residue now unexpired of the term by the said indenture of mortgage expressed to be granted, subject to such equity of redemption as the last-mentioned hereditaments are now subject to by virtue of the said indenture of mortgage, on payment to the said (*new trustees*) or the survivor of them, or the executors or administrators of such survivor or their or his assigns, of the said principal sum of £ and interest](*a*); AND WHEREAS by another indenture intended to bear even date with and to be executed immediately after the execution of these presents, and to be made between the same persons as parties thereto as are parties to these presents and in the same order, it is intended to appoint the said [*new trustees*] in the place of the said [*original trustees*] of the within-mentioned indenture of even date with the within-

—of intended assignment of trust funds and mortgaged premises by indenture of even date,

—and of intended appointment of new trustees of the indenture of even date with the settlement, and vesting of the leaseholds, by an indenture of even date (*b*).

(*a*) The words in square brackets may be omitted if for the word "covenant" in the line preceding their commencement the words "securities for the same respectively" be substituted. In that case, if the mortgage be one of freehold, the words "and convey" should be added to "assign" in the previous part of the recital.

(*b*) See last preceding precedent.

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written indenture, and to vest the messuage and hereditaments described in the said within-recited indenture in the said [*new trustees*], upon the trusts by virtue of the said within-recited indenture applicable to the last-mentioned hereditaments; NOW THIS INDENTURE WITNESSETH [*Appointment of new trustees*, above, p. 195]. AND IT IS HEREBY AGREED AND DECLARED that the said [*new trustees*], their executors, administrators and assigns shall, when and so soon as the hereinbefore first-recited indenture of even date herewith shall have been executed by the said [*original trustees*], stand possessed of the said mortgage debt of £ and interest, and the security for the same hereinbefore mentioned and intended to be assigned to them as aforesaid, and shall, when and so soon as the said leasehold hereditaments hereinbefore mentioned and intended to be assigned by the secondly hereinbefore-recited indenture of even date herewith shall have been sold in pursuance of the trust for sale in the within-recited indenture contained as within mentioned, stand and be possessed of and interested in the residuary or net money to be produced by the said sale, Upon the trusts and with and subject to the powers, provisoes and declarations applicable to the said mortgage debt, interest, security and residuary money respectively by virtue of the within-written indenture; AND THAT when and so soon as the secondly hereinbefore-recited indenture of even date herewith shall have been executed by the said [*original trustees*], and thenceforth until the said leasehold hereditaments intended to be thereby assigned shall be sold in pursuance of the said trust in that behalf, the said [*new trustees*] and the survivor of them shall pay or apply the rents and profits of the last-mentioned hereditaments in the manner in which they are by the within-written indenture directed to be applied; IN WITNESS, etc.

Appointment and declaration of trust of mortgage debt and securities and of proceeds of leaseholds,

and of rents and profits until sale.

XXXIX.

TRANSFER *of* MORTGAGE *of* LEASEHOLDS *made by* INDORSEMENT, *and on* APPOINTMENT *of* NEW TRUSTEES.

THIS INDENTURE, made the day of , 18 , BETWEEN the within-named [*retiring trustees*] of the one part, and [*new trustees*], of the other part; WHEREAS the within-mentioned sum of £ , with interest thereon from the day of last, is now owing on the security of the within-written indenture, and the said sum of £ and the interest now due for the same have become and are now the property in equity of the said [*new trustees*], NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, the said [*retiring trustees*] do, and each of them doth, hereby assign unto the said [*new trustees*], their executors and administrators jointly, ALL THAT the said principal sum of £ so owing on the security of the within-written indenture, as is hereinbefore mentioned, and the interest now due and henceforth to become due for the same, and the benefit of the covenants in the within-written indenture contained for the payment of the same principal sum and interest, and of all securities for the same, TO HAVE AND TO HOLD the said principal sum and interest and all other the premises hereinbefore expressed to be hereby assigned unto the said [*new trustees*], their executors, administrators and assigns jointly; AND the said [*retiring trustees*] (but each of them with respect to his own acts and deeds only) do hereby covenant with the said [*new trustees*] that the said [*retiring trustees*] respectively have not done or knowingly suffered or been parties or privies to anything whereby the premises hereinbefore expressed to be hereby assigned, or any part thereof respectively, are, is, or

Parties.

Recital of state of mortgage debt.

Assignment of mortgagedebt.

Covenant against incumbrances (*a*).

(*a*) The transferor of a mortgage, though beneficial owner of the debt, does not enter into any other covenant than one against incumbrances; but he does not assign the debt as a mortgagee of it, and though in the case for which this precedent is adapted he is a trustee of the debt, it is not expedient to show that fact on the face of the deed. The seventh section of the Conveyancing Act 1881 does not therefore appear to be applicable, and a covenant against incumbrances should, it is conceived, be inserted. See below, p. 249.

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Assignment of leasehold.

may be impeached, affected or incumbered in title, estate, or otherwise howsoever; AND THIS INDENTURE ALSO WITNESSETH that, in like consideration of the premises, the said [*retiring trustees*] as mortgagees (*a*) do, and each of them as a mortgagee (*a*) doth, hereby assign and convey unto the said [*new trustees*], their executors, administrators and assigns jointly, ALL AND SINGULAR the messuage or dwelling-house, gardens and appurtenances, and all other the premises described in or expressed to be demised by the within-written indenture, To HAVE AND TO HOLD the said messuage or dwelling-house, gardens and appurtenances, and all other the premises expressed to be hereby assigned unto the said [*new trustees*], their executors, administrators and assigns, jointly for all the residue now unexpired of the term by the within-written indenture expressed to be granted, subject to such equity of redemption as the premises are now subject to by virtue of the within-written indenture, on payment to the said [*new trustees*] or the survivor of them, or the executors or administrators of such survivor or their or his assigns, of the principal sum of £ and interest owing on the security of the within-written indenture; IN WITNESS, etc. (*b*).

(*a*) Below, p. 251.
(*b*) Notice of the deed must be given to the mortgagor.

XL.

DEED *to be indorsed on* SETTLEMENT *whereby* TRUSTEE *retires from the* TRUST *without the* APPOINTMENT *of a* SUBSTITUTE (*a*).

THIS INDENTURE, made the day of , 18 , between the within-named [*retiring trustee*] of the first part, the within-named [*co-trustees*] of the second part, and the within-named [*persons authorised to appoint new trustees*] of the third part; WHEREAS the marriage in the within-written indenture stated to be intended to be, has since been solemnised; AND WHEREAS the sum of £ Ordinary Stock of the Great Western Railway Company in the within-written indenture stated to be intended to be, was afterwards transferred to and registered in the books of that Company in the joint names of the said [*retiring and continuing trustees*]; AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trust by the within-written indenture reposed in him jointly with the said [*continuing trustees*], and the said [*continuing trustees and persons authorised to appoint new trustees*] are willing that he should retire; AND WHEREAS it is intended that immediately after the execution of these presents the said sum of £ Ordinary Stock of the Great Western Railway Company shall be transferred to and registered in the books of the said Company in the joint names of the said [*continuing trustees*] only; NOW THIS INDENTURE WITNESSETH that, in order to effectuate the said desire of the said [*retiring trustee*], and at his request, the said [*continuing trustees*] and the said [*persons authorised to appoint new trustees*] do by this deed consent to the discharge of the said [*retiring trustee*] from the trusts by the within-written indenture reposed in him jointly with the said [*continuing trustees*], and to the vesting in the said [*continuing trustees*] alone of the trust property; IN WITNESS, etc.

Parties.

Recital of marriage,

—and of original transfer of stock,

—and of desire to retire,

—and of intended transfer.

Consent to discharge and to vesting.

(*a*) See 44 & 45 Vict., c. 41, s. 32. A retirement of this kind can only be effected where there are more than two trustees, and a contrary intention is not expressed in the instrument creating the trust. Moreover, the section authorising such a retirement has effect subject to the terms of that instrument and to any provisions therein contained (Treatise, 1381-2). The power of transferring the trust property by declaration (above, p. 200) is applicable on the retirement of a trustee, but not to such property as that described in the precedent. A transfer and registration of the stock should promptly follow execution of this deed.

DISPOSITIVE APPOINTMENTS (*a*).

XLI.

CHARGE *of* JOINTURE *and* PORTIONS *in* EXERCISE *of* POWER (*b*).

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN [*husband*] of etc., of the first part, [*wife*], the wife of the said [*husband*], of the second part, and [*trustees*] of , of the third part: WHEREAS by an indenture bearing date etc. and expressed to be made between [*parties to re-settlement*, above, p. 28], being a resettlement made upon the marriage of the late Right Honourable W. W. Earl of *X*, then W. W. Viscount *Y*, with the late Right Honourable Augusta Countess *X*, then the Right Honourable Lady Augusta *Z*, certain manors and hereditaments in the said indenture first and secondly described were in the manner therein expressed, and as to several parts thereof subject to several terms and incumbrances affecting the same respectively, limited to certain uses, which have all since determined and failed respectively, with remainder To the use of the said [*husband*], then the Honourable *A B*, and his assigns for his life without impeachment of waste, with remainder to the use of the first and every other son of the body of the said [*husband*] successively in remainder in tail male, with divers remainders over; and by the said indenture of settlement certain powers of charging the said manors and hereditaments with the payment of £40,000 and £20,000 and interest thereon respectively were created and have since been fully exercised, and the said W. W. Earl of *X* was impowered, in an event which did not happen, to charge the said manors and hereditaments with an annuity for the jointure of an after-taken wife, and with a sum of money for the portions of children by her; And by the said indenture of settlement it was agreed and declared, that it should be

Recital of settlement.

(*a*) Treatise, 344.

(*b*) This precedent exercises the powers of jointuring and charging portions contained in Precedent IV., above, p. 53. As to supplemental deeds, see below, p. 275.

lawful for every of them the said [*husband*] and the several other persons to whom estates for life were thereby limited, after the death and failure of issue male of the said W. W. Earl of *X*, of and in the said manors and other hereditaments thereby appointed, granted and conveyed, either before or after he should by virtue of the limitations thereinbefore contained become entitled for an estate in possession to the same manors and other hereditaments, by any deed or deeds, with or without power of revocation and new appointment, or by his last will or any codicil or codicils thereto, to limit or appoint unto and to the use of any woman or women whom he might marry or might have married for her life or their respective lives, and in full or in part only for a jointure and in bar or without being in bar of dower and freebench, and to take effect immediately after his death, any yearly rentcharge or yearly rentcharges not exceeding for any such woman the clear yearly sum of £1,000 sterling, without any deduction (except on account of succession duty and property or income tax), to be issuing out of and charged and chargeable upon all or any part of the said manors and hereditaments thereby appointed, granted and conveyed or intended so to be, and payable by such periodical payments as the person exercising that power should in any such manner as aforesaid appoint, But so nevertheless that the same should be without prejudice to all uses and powers so limited or capable of being so exercised as to affect the manors and other hereditaments so to be charged as last aforesaid in priority to the estate of the person exercising that power, And so as that no deed, will or codicil whereby the power now in recital should purport to be exercised by any person who should not at the time of executing the same deed, will or codicil have become by virtue of the limitations therein contained entitled for an estate in possession as distinguished from reversion or remainder to the premises should operate in exercise of the same power unless and until that person should have or some of his issue should have or if of the age of twenty-one years would have so as aforesaid become entitled for such an estate in possession as last aforesaid to the premises, And so as that no greater annual amount than £6,000 should be payable at the same time on account of any jointures secured by that indenture or under the powers thereof out of the said settled hereditaments, anything thereinbefore contained to the contrary thereof in anywise notwithstanding, And if at any

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PRECEDENT XLI time or times the jointure rentcharges charged on the said hereditaments as aforesaid should or otherwise would exceed ni yearly amount the said sum of £6,000, Then and in every such case the last jointure or jointures in point of limitation should be suspended or reduced so far and so long as might be necessary for reducing the total yearly amount thereof to the sum of £6,000, And for the purpose of ascertaining what money should have been effectually charged by instruments purporting to execute that power, the rentcharges purporting to be charged in exercise of that power should have preference among themselves according to the priority in order of limitation of the estates for life of the persons by whom the same should respectively be or purport to be charged, And it was by the said indenture of settlement declared that it should be lawful for every of them the said [*husband*] and other persons to whom estates for life in the said manors and hereditaments had been limited to take effect after the death and failure of issue male of the said W. W. Earl of *X*, either before or after he should by virtue of the limitations thereinbefore contained become entitled in possession, as distinguished from remainder or reversion, to the same manors and hereditaments under the limitations aforesaid, by any deed or deeds with or without power of revocation and new appointment, or by will or codicil, to subject and charge all or any part of the said manors and hereditaments thereby so limited in use as aforesaid with the payment of any principal sum or sums of money not exceeding in the whole £ sterling for the portion or portions of his child or children other than a son who before attaining the age of twenty-one years should by virtue of the limitations therein contained become entitled whether in possession or remainder to the estate in tail male immediately succeeding the estate for life of the person then exercising the power now being recited, with interest for the same at any rate not exceeding 4 per cent. per annum, to commence immediately after the decease of the person for the time being exercising the power now being recited, such portion or portions to vest and become payable at such time or times, in such shares and proportions and with such clauses of survivorship as the person exercising that power should by the same or any other deed or deeds with or without power of revocation and new appointment, or by will or codicil, direct and appoint, and for the purpose of raising such portion or portions and interest as last aforesaid by

the same or any deed or deeds, or by will or codicil, to limit or appoint the said manors and hereditaments which he should so charge with any portion or portions to any person or persons for any term or terms of years without impeachment of waste, upon any trusts for raising and securing such portion or portions and interest as last aforesaid; But so as that every exercise of that power should be without prejudice to all uses and powers so limited or capable of being so exercised affecting the manors and other hereditaments so to be charged as last aforesaid in priority to the life estate of the person exercising the same power, And so as that no deed, will or codicil whereby that power should purport to be exercised by any person who at the time of executing the same deed, will or codicil should not have become by virtue of the limitations thereinbefore contained entitled for an estate in possession, as distinguished from in remainder or reversion, to the hereditaments in respect of which that power might be then exercised, should operate in exercise of the same power, unless and until that person, or some or one of his issue, should have become entitled to such an estate for life in possession as aforesaid, And so as that no greater sum than £ in the whole should ultimately become a charge on the hereditaments capable of being charged under any exercise or exercises of that power, And that if by successive exercises of that power a greater sum than £ would but for that proviso be charged for portions, the deed or deeds, will, codicil or codicils whereby such charge in excess of £ would but for that proviso be created, should to the extent to which the excessive charge would be created fail, And that for the purpose of ascertaining what money should have been effectually charged by instruments purporting to exercise that power the sums charged or purporting to be charged in exercise of that power should have preference among themselves according to the priority in order of limitation of the estates of the persons by whom the same should respectively be or purport to be charged; AND WHEREAS the said [*husband*] is that one of the persons by whom the hereinbefore-recited powers of jointuring and charging for portions may be exercised whose estate in the said manors and hereditaments by virtue of the hereinbefore in part recited indenture of settlement is prior in order of limitation to the estates of all the other persons by whom the same powers respectively could or can be exercised; AND WHEREAS the said [*husband*] is desirous of exercising in

—that husband is the first donee of power,

—of desire to exercise power.

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the manner hereinafter appearing the powers of limiting a jointure and charging portions for younger children so by the said indenture of settlement to him given or limited as hereinbefore mentioned; NOW THIS INDENTURE WITNESSETH that, by virtue and in exercise of the power to the said [*husband*] for this purpose by the said in part recited indenture of settlement given or limited as aforesaid, and of every or any other power or authority in anywise enabling him in this behalf, the said [*husband*] as settlor (*a*), DOTH by way of settlement (*a*) limit and appoint to and to the use of the said [*wife*], A yearly rentcharge amounting to the clear yearly sum of £1000 sterling to be issuing out of and charged and chargeable upon ALL AND SINGULAR the manors and other hereditaments granted and settled by the hereinbefore-recited indenture of settlement, TO HAVE, RECEIVE, and take the said annual sum or yearly rentcharge of £1000 from the time of the death of the said [*husband*] unto the said [*wife*] and her assigns during her life, The said annual sum or yearly rentcharge to be for her jointure and in bar of all dower and freebench to which she may be or otherwise might become entitled as widow of the said [*husband*], and to be paid to the said [*wife*] or her assigns quarterly on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, without any deduction in respect of any existing or future taxes, charges, impositions or assessments whatsoever (*b*); the first quarterly payment of the said annual sum or yearly rentcharge of £1000 to be made on such of the said days of payment as shall first happen after the death of the said [*husband*], but so nevertheless that the same shall be without prejudice to the prior estates, charges, terms, and incumbrances for the time being affecting the said manors and hereditaments hereby charged (*c*); AND THIS INDENTURE ALSO WITNESSETH that, by virtue and in exercise of the power or authority to the said [*husband*] for this purpose by the said indenture of settlement given or limited as aforesaid, and of every or any other power or authority in anywise enabling him in this behalf, the said [*husband*] as settlor (*a*) DOTH by way of settlement (*a*) subject and charge all and singular the said manors and other hereditaments by the

Appointment of rentcharge,

to be charged upon the settled lands.

Charge of the settled lands with portions.

(*a*) Treatise, 323, 324.

(*b*) If the appointor is not the creator of the power, add here "except succession duty."

(*c*) For the means of recovering the rentcharge, see Treatise, 934—944.

said indenture of settlement limited to him in use as hereinbefore is mentioned (but without prejudice as aforesaid, and also subject and without prejudice to the annual sum or yearly rentcharge of £1000 hereinbefore limited to the said [*wife*] and her assigns for her life as aforesaid, and to the powers and remedies by law given to her for securing the payment thereof), with the payment of the principal sum or sums of money hereinafter mentioned, together with interest for the same respectively after the rate of 4 per centum per annum, to commence immediately after the death of the said [*husband*] for the portion or portions of all and every the children and child of the said [*husband*] by the said [*wife*] (other than a son who before attaining the age of twenty-one years shall by virtue of the limitations in the hereinbefore-recited indenture contained become entitled, whether in possession or remainder, to the estate in tail male immediately succeeding the estate for life of the said [*husband*]), and to vest and become payable at such time or times, in such parts, shares and proportions, and with such clauses of survivorship as hereinafter are mentioned, (that is to say,) If there shall be but one child of the said [*husband*] by the said [*wife*] (other than a son who shall so become entitled as aforesaid for such an estate as aforesaid), then the sum of £10,000 to be for the portion of that only child and to be paid to that only child (other than such a son as last aforesaid), being a son at his age of twenty-one years or being a daughter at her age of twenty-one years or day of marriage, which shall first happen, if the same shall not happen in the lifetime of the said [*husband*], but if the same shall happen in his lifetime then immediately after his death; And in case there shall be two or more such children (other than a son who shall so as aforesaid become entitled to such an estate as aforesaid), THEN the sum of £15,000 to be for the portions of such two or more children as last aforesaid, and to be divided between those children in equal shares and proportions; the share or shares of such of the last-mentioned children as shall be a son or sons to be paid to him or them respectively at his or their age or respective ages of twenty-one years, and the share or shares of such of the last-mentioned children as shall be a daughter or daughters to be paid to her or them respectively at her or their age or respective ages of twenty-one years or the day or respective days of her or their marriage, which shall first happen, if the same ages, days or times respectively shall

Definition of portionists.

Provision for an only child,

and for two or more children.

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not happen in the lifetime of the said [*husband*], but if the same respectively shall happen in the lifetime of the said [*husband*] then immediately after his death; PROVIDED ALWAYS that if and so often as any such child as last aforesaid shall die before the share intended for him or her shall so become payable as aforesaid, then and in every or any such case the share hereby as well originally as by accruer under this clause intended for every such child so dying as aforesaid shall from time to time go, accrue and belong to the others or other of the said children (other than a son who shall so as aforesaid become entitled to such an estate as aforesaid), and shall be equally divided between or among them (if more than one), share and share alike, And as far as circumstances will admit shall be paid to them, him or her at such ages or times or age or time and in such manner as is hereinbefore declared and directed concerning their, his or her original shares or share of the said sum of £15,000; AND THIS INDENTURE ALSO WITNESSETH that, for better securing payment of the said sums of £10,000 or £15,000 hereinbefore charged on the said hereditaments and premises for portions as aforesaid, and by virtue and in exercise of the power to the said [*husband*] for this purpose by the said in part recited indenture of settlement given or limited as aforesaid, and of every or any other power or authority enabling him in this behalf, the said [*husband*] as settlor DOTH hereby by way of settlement limit and appoint unto the said [*trustees*] ALL AND SINGULAR the said manors and other hereditaments by the said hereinbefore in part recited indenture of settlement granted and settled as hereinbefore is mentioned with their appurtenances, TO HAVE AND TO HOLD the manors and premises hereinbefore expressed to be hereby limited and appointed, with their rights, members and appurtenances (but subject and without prejudice to all the estates, terms, charges and incumbrances for the time being affecting the said manors and hereditaments in priority to the life estate of the said [*husband*], and also subject and without prejudice to the annual sum or yearly rentcharge of £500 and the powers and remedies for securing the same) unto the said [*trustees*], their executors, administrators and assigns, for and during the term of 500 years to be computed from the day of the death of the said [*husband*] and thenceforth next ensuing, without impeachment of waste, But upon the trusts and for the intents and purposes hereinafter declared of and concerning the same, (that is to

Accruer clause.

Appointment of the settled lands,

To hold

for a term of 500 years,

say) UPON TRUST that the said [*trustees*] and the survivor of them (but subject and without prejudice as aforesaid) shall from time to time permit the person or persons who for the time being shall be entitled to the said hereditaments and premises in remainder or reversion immediately expectant on the determination of the said term of 500 years to receive and take the rents, issues and profits of the said hereditaments and premises until either the said sum of £10,000 or the said sum of £15,000 or some part thereof shall become payable, AND UPON THIS FURTHER TRUST, that in case and when the said sum of £10,000 or £15,000 or any part thereof shall become payable by virtue of the trusts hereinbefore declared concerning the same, the said [*trustees*] or the survivor of them shall by mortgage or sale of the manors, hereditaments and premises comprised in the said term of 500 years or some part thereof for all or any part of the same term levy and raise the sum of £10,000 or £15,000 as the case may be, or so much thereof as shall become payable, together with such interest for the same as aforesaid, And pay the same to or among the child or children of the said [*husband*] by the said [*wife*] (other than a son who before attaining the age of twenty-one years shall so become entitled as aforesaid) on or at such ages, days or times, in such manner, and if more than one in such shares and proportions, as are hereinbefore mentioned and appointed for payment of the same; PROVIDED ALWAYS, and it is hereby further agreed, that neither the said [*trustees*] nor the survivor of them nor any other trustees or trustee of these presents shall sell or mortgage any part or parts of the manors and hereditaments comprised in the said term of 500 years until some one of the said portions shall become payable by virtue of the trusts hereinbefore expressed, and that the rents, issues and profits of the said manors, hereditaments and premises shall until some one of such portions shall become payable as aforesaid be received and taken (but subject and without prejudice as hereinbefore is mentioned) by the person or persons who for the time being shall be entitled to the premises comprised in the said term of 500 years in reversion or remainder immediately expectant on the determination of the same term to and for his and their own proper use and benefit; PROVIDED ALWAYS, and it is hereby further declared and agreed, that it shall be lawful for the said [*husband*] from time to time and at any time by any deed or deeds to revoke

PRECEDENT XLI
upon trust

to raise the portions when payable by mortgage or sale.

No sale or mortgage until a portion is payable.

Destination of rents and profits until then.

Power of revocation.

PRECEDENT XLI or determine in the whole or in part the appointment hereby made of the said annual sum or yearly rentcharge of £500 hereby limited and appointed or expressed and intended so to be, And also to revoke or determine in the whole or in part the appointment and charge hereby made of the said sum of £10,000 and £15,000 as the event may be, hereby provided for the portion or portions of the daughter or daughters or younger son or younger sons of the said [*husband*] by the said [*wife*] as aforesaid, and the interest and maintenance money payable for or in respect thereof, and the term of years hereby created for securing the same respectively and the trusts thereof, And by the same or any other deed or deeds to exercise in any other manner he shall think proper the powers intended to be hereby exercised or any of them; IN WITNESS, etc. (*a*).

(*a*) If the power requires in its exercise the attestation of any specified number of witnesses or other solemnities, this should be noted at the end of the draft.

XLII.

APPOINTMENT *by* FATHER *on* MARRIAGE *of a* DAUGHTER *of* SUM *of* MONEY, *being one-third of* £10,000, *to be raised under* TRUSTS *of a* TERM *in favour of that* DAUGHTER—*of* RESIDUE *in favour of two other* DAUGHTERS *contingently.*—GIFTS *over and* MAINTENANCE MONEY *appointed.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*father of appointees*] sendeth Greeting: [*Recital of settlement on marriage of* (father) *and Elizabeth his late wife, showing that the marriage was solemnised, and that the settled estates were limited to, among other uses, trustees for a term of* 1000 *years, upon trust to raise if there should be three younger children* £10,000 *for their portions, with provisions for maintenance, setting out the trusts and powers of appointment of the fund.*] AND WHEREAS the said Elizabeth the late wife of the said [*father*] died without having joined her said husband the said [*father*] in making any appointment of the said sum of £10,000 as aforesaid, and no appointment has yet been made thereof; AND WHEREAS there was issue of the said [*father*] by the said Elizabeth his late wife, six children (that is to say), John the eldest son, Charlotte, William, Alice, Janet and Ella, the only younger children, and the said Charlotte and William have both died under the age of twenty-one years and unmarried, and the said Alice, Janet, and Ella, are respectively still under the age of twenty-one years; AND WHEREAS a marriage has with the consent of the said [*father*] been agreed upon and is intended to be solemnised between the said Janet and *X Y* of , and upon the treaty for the said intended marriage It was agreed among other things that the said [*father*] should, in exercise of the power to him for that purpose given by the said in part recited indenture as aforesaid, appoint the said sum of £10,000 in the manner hereinafter contained; NOW KNOW YE AND THESE PRESENTS WITNESS that pursuant to

Recital of settlement,

—of death of wife without appointment,

—of state of family,

—of intended marriage of daughter and of agreement to appoint.

Appointment,

PRECED XLII.

and by virtue and in exercise of the power and authority so to him for that purpose given or reserved by the said in part recited indenture as aforesaid, and of every other power or authority in anywise enabling him in that behalf, the said [*father*] doth hereby direct and appoint that the said sum of £10,000 shall be in trust for the said Alice, Janet and Ella, in the events and in the shares following, (that is to say) the sum of £3333 6*s.* 8*d.*, part of the said sum of £10,000, shall be in trust for the said Janet if and when the said intended marriage shall be solemnised or the said Janet shall attain the age of twenty-one years (*a*), but the payment thereof shall be postponed until the death of the said [*father*], AND the sum of £6666 13*s.* 4*d.*, the residue of the said sum of £10,000, shall be in trust for the said Alice and Ella in equal shares, if and when they respectively shall attain the age of twenty-one years or marry, but the payment thereof respectively shall be postponed until the death of the said [*father*]; AND the said [*father*], in further exercise of the power or authority so to him given or reserved as aforesaid, DOTH HEREBY DIRECT AND APPOINT THAT in case the said Alice shall neither live to attain the age of twenty-one years nor marry under that age, and the said Janet shall live to attain the age of twenty-one years or shall marry, then the share of the said Alice of and in the said sum of £6666 13*s.* 4*d.* shall be in trust for the said Janet, her executors, administrators and assigns, but the payment thereof shall be postponed until the death of the said [*father*]; AND ALSO THAT in case the said Ella shall neither live to attain the age of twenty-one years nor marry under that age, and the said Janet shall live to attain the age of twenty-one years or shall marry, then the share of the said Ella of and in the said sum of £6666 13*s.* 4*d.* shall be in trust for the said Janet, her executors, administrators and assigns, but the payment thereof shall be postponed until the death of the said [*father*], AND the said [*father*], in exercise of the power to him for that purpose given or reserved as aforesaid, and of every other power enabling him in this behalf, DOTH HEREBY DIRECT AND APPOINT THAT from and immediately after the death of the said [*father*] the portions hereby provided for the said Alice, Janet, and Ella respectively as aforesaid shall carry interest at the rate of per centum per annum, notwithstanding the days

of one-third to intended bride,

and of two-thirds to the other two daughters.

Appointment to the intended bride of the shares of the other two daughters contingently.

Provision as to interest on the portions of the other two daughters.

(*a*) This keeps the time of vesting within the period allowed by the rule against perpetuities.

or times at which the said portions are hereby respectively made to vest shall not have arrived, and that such interest shall be paid and payable by half-yearly payments in every year, and the first half-yearly payment thereof shall be made six calendar months after the death of the said [*father*] (*a*); IN WITNESS, etc.

(*a*) Whether, if it be wished to do so, a power of advancement can be created, depends upon the terms of the power in exercise of which the appointment is made. Notice of this deed should be given to the trustees of the 1000 years term. No provision for the maintenance and education of infant portionists after the father's death is needed. The statutory provisions (Treatise, 1023) are applicable and seem sufficient for that purpose, and for the accumulation and distribution of any surplus income. The power in this case did not enable the donee to empower the trustees to raise in the lifetime of the father—the tenant for life in possession—parts of the portions for the advancement of the portionists. In cases where such an additional power is given and exercised, provision should be made for compelling the father to keep down the interest on the sums raised for that purpose which should accrue during his life. As to the use of supplemental deeds, see below, p. 275.

XLIII.

APPOINTMENT *by a* WIDOW *to her* SON (*on his* MARRIAGE) *of* ONE-EIGHTH PART *of the* FUNDS *settled on her* MARRIAGE.

Recital of settlement,

TO ALL TO WHOM THESE PRESENTS SHALL COME, *A* of etc., widow [*the mother*], sends greeting: WHEREAS by an indenture bearing date the day of , 18 , and expressed to be made BETWEEN [*the late father*], since deceased, of the first part, [*mother*] of the second part, and [*trustees*] of the third part (being a settlement made upon a marriage then intended and afterwards solemnised between the said [*late father*] and the said [*mother*] his wife), It was declared that the said [*trustees*] their executors, administrators and assigns, should stand possessed of a sum of £20,000 Reduced 3 per cent. Annuities, which had been transferred into the names of the said [*trustees*] as in the said indenture is mentioned, And of the dividends and annual produce thereof, IN TRUST for the said [*mother*], her executors, administrators and assigns, until the said marriage should be solemnised, and from the solemnisation thereof Upon trust that the said [*trustees*] and the survivor of them should apply the dividends and annual produce thereof in the manner directed by the indenture now in recital for the benefit of the said [*father*] and [*mother*] his wife, And after the decease of the survivor of them should stand possessed of the said trust stock, funds and securities, and the dividends and annual produce thereof, IN TRUST for all and every or such one or more exclusively of the others or other of the children and child of the said [*father*] and [*mother*] his wife, with such provision for their respective maintenance, education and advancement in the world, at such age or respective ages, days or times, and (if more than one) in such shares and proportions, and with such annual sums of money and limitations over for the benefit of the said children or some or one of them, and upon such conditions, with such restrictions and in such manner as the said [*father*] and [*mother*] his wife should as in the indenture now in

recital is mentioned during their joint lives appoint, and in default of such joint appointment Then as the survivor of them the said [*father*] and [*mother*] his wife should by any deed or deeds with or without power of revocation and new appointment to be by him or her sealed and delivered in the presence of and attested by two or more credible witnesses, or by will or codicil, from time to time direct or appoint; AND WHEREAS the said [*father*] died on the day of , 18 , without having joined with the said [*mother*] in any exercise of the power of appointment so given to them jointly as aforesaid, AND WHEREAS there has been issue of the said marriage eight children, and *A B* of etc. [*the son*], is one of those children; AND WHEREAS a marriage has been agreed upon and is intended to be solemnised between [*the son*] and *G H* of etc. [*intended wife*]; NOW THESE PRESENTS WITNESS that by virtue and in exercise of the said power or authority to the said [*mother*] as the survivor of herself and the said [*late father*] given by the said indenture of the day of , as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling her in this behalf, The said [*mother*] DOTH hereby direct and appoint that from and immediately after the execution of these presents ONE EQUAL EIGHTH PART or share of the said sum of £20,000 Reduced £3 per centum Annuities, and of the dividends and annual income thereof respectively, shall go and belong to and be vested in the said [*son*] (subject only to the life interest of the said [*mother*] in the said sum of £20,000), and shall be transferred to the said [*son*], his executors, administrators and assigns immediately after the death of the said [*mother*]; PROVIDED ALWAYS nevertheless, and the said [*mother*] doth hereby further direct and appoint, that (unless she shall hereafter otherwise direct or appoint) the said [*son*] shall not be entitled to any further or other share of the said sum of £20,000, or of the dividends or annual income thereof respectively, without bringing the share hereinbefore expressed to be appointed into hotchpot, and accounting for the same accordingly; PROVIDED ALWAYS, and the said [*mother*] doth hereby further direct and appoint, that if the said intended marriage between the said [*son*] and [*intended wife*] shall not be solemnised within six calendar months next after the date

PRECED. XLIII.

of state of family, that joint power was not exercised.

and of intended marriage.

Appointment of share to son.

Hotchpot (*a*).

Appointment conditional on solemnisation of marriage.

(*a*) This is unusual. In the case for which this precedent was framed there was not a hotchpot clause (as to which see Treatise, 1220) in the settlement, and therefore one was needed in the appointment.

PRECED. XLIII. of these presents, then the directions and appointments hereinbefore contained shall upon the expiration of the said six calendar months cease and be void; IN WITNESS, etc (*a*).

(*a*) See note above, p. 220. The sealing and delivery of this deed by the appointor needed attestation by at least two witnesses. Notice of the appointment should be given to the trustees of the original settlement, and a memorandum of the appointment should be indorsed upon that instrument. As to the use of supplemental deeds, see p. 275.

XLIV.

APPOINTMENT *by* PARENTS *to a* CHILD *on* MARRIAGE *of a* SUM *to be raised out of the* TRUST PROPERTY *settled on the Appointors'* MARRIAGE.

TO ALL TO WHOM THESE PRESENTS SHALL COME [*parents*] send greeting; [*Recital of parents' marriage settlement, setting out the power to be exercised, and recitals showing the present state of investment of the trust property, the death of one of the trustees, the fact that the appointee is an object of the power, and the agreement to marry.*] NOW THESE PRESENTS WITNESS THAT by virtue and in exercise of the power or authority for this purpose given to them the said [*parents*] by the hereinbefore-recited indenture as aforesaid, and of every or any other power or authority in anywise enabling them in this behalf, the said [*parents*] do hereby direct and appoint that the sum of £2000 sterling, to be raised out of the money, stocks, funds and securities now subject or which may hereafter become subject to the power or authority contained in the hereinbefore-recited indenture, shall from and immediately after the execution of these presents go and belong to and be vested in the said [*daughter*] (subject only to the life interests of the said [*parents*] and of the survivor of them in the said trust premises), and shall be raised out of the said trust premises and be paid to the said [*daughter*], her executors, administrators and assigns, immediately after the death of the survivor of the said [*parents*], with interest after the rate of 4 per centum per annum from the death of that survivor [*proviso for avoidance if marriage not solemnised*, above, p. 225]; IN WITNESS, etc. (*a*).

Recital of settlement.

Appointment.

(*a*) Above, p. 220, note; below, p. 228, note (*a*). Notice of this deed should be given to the trustees of the settlement. As to supplemental deeds, see below, p. 275.

XLV.

APPOINTMENT *to a* DAUGHTER *of a* SUM *of* MONEY, *being the part to which in default of appointment she is entitled of a* FUND *to be raised under the Trusts of a Term in Land and of such* FURTHER SUM *as she will be so entitled to if any other Child fail to acquire a Vested Interest* (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME [*appointor*] sends greeting: [*Recitals of settlement, and that there has*
Recitals. *been issue of marriage five children, of whom Margaret has attained the age of twenty-one years.*] AND WHEREAS the said [*appointor*] is desirous of making such an appointment for the benefit of the said Margaret as is hereinafter contained; NOW
Appointment. THESE PRESENTS WITNESS that in order to effectuate the said desire, and in exercise of the power to the said [*appointor*] for this purpose given by the hereinbefore-recited indenture as aforesaid, and of every or any other power enabling him in this behalf, the said [*appointor*] DOTH HEREBY DIRECT AND APPOINT, First that the sum of £3000, part of the sum of £15,000, which is so directed to be raised under the trusts of the said term of 500 years as aforesaid, and secondly, if any of the said five younger children shall not live to attain the age of twenty-one years or be married, that such a further part (if any) of the said sum of £15,000 as together with the said sum of £3000 will make up the share of the said sum of £15,000 to which in the events which shall have happened the said Margaret, if no appointment of the last-mentioned sum or any part thereof had been made, would have been entitled by virtue of the said trusts of the hereinbefore-recited indenture, shall from and after the death of the said [*appointor*] be in trust for the said Margaret; [*Power of advancement if wished and authorised, and Power of revocation if wished,* pp. 233, 219]; IN WITNESS, etc. (*b*).

(*a*) It should be observed that by such an appointment as this the appointee becomes entitled to the definite sum appointed, and if subsequently the fund is depreciated or part of it is lost, the loss falls on the other objects of the trust, exclusively of the appointee. If this possible consequence be not desired the proper course is to appoint an aliquot share (Precedent XLIII.), instead of a definite sum of money.

(*b*) Above, p. 220, note. Notice of this deed should be given to the trustees of the settlement. As to supplemental deeds see below, p. 275.

XLVI.

APPOINTMENT *by a* FATHER *in favour of a* SON *of Sums previously advanced to the* SON, *being Part of a* FUND *in which the* FATHER *has himself a* LIFE INTEREST, *in exercise of a* POWER *in the* FATHER'S MARRIAGE SETTLEMENT, *and* RELEASE *to* TRUSTEES *in respect of* SALES *of* STOCK *made for the purpose of making the said Advances.*

THIS INDENTURE, made the day of , 18 , BETWEEN [*father*], of the first part; [*son*], of the second part; and [*trustees*], of the third part; [*Recital of Parents' Marriage Settlement, showing that the trust fund consisted of £5000 £3 5s. per cent. Bank Annuities, and setting out the power*, p. 224.] (*a*) AND WHEREAS there has been issue of the said marriage the [*son*] and seven other children, and no more; AND WHEREAS the said sum of £5000 £3 5*s.* per cent. Bank Annuities was after the date of the hereinbefore-recited indenture of settlement converted by Act of Parliament into the sum of £5000 New £3 per cent. Annuities; AND WHEREAS the said [*trustees*], on or about the day of , 1870, at the request of the said [*father*], and *H.* his wife, sold the sum of £350, part of the said sum of £5000 New £3 per cent. Annuities, which produced the sum of £344 15*s.* sterling, and advanced the last-mentioned sum to the said [*father*] for the purpose of articling the said [*son*], then a minor, to a solicitor; AND WHEREAS the said [*mother*] died some time in the year 1870, without having joined with the said [*father*] in any exercise of the said joint power of appointment so reserved to them by the said indenture of settlement as aforesaid; AND WHEREAS the said [*son*] has attained the age of twenty-one years; AND WHEREAS at the request of the said [*father*] the said [*trustees*], in anticipation of the appointment hereinafter made on or about the day of , sold out the sum of £150, further part of the said sum of New £3 per cent. Annuities, which produced the sum of £151 sterling; AND

Parties.

Recital of settlement,

of state of family (*a*)

of statutory conversion of trust funds,

of sale for advancement of son,

of death of mother without appointment.

of majority of son.

of further sale in anticipation of appointment,

of the application of the sums so raised,

(*a*) As to the use of supplemental deeds, see below, p. 275.

PRECED. XLVI. WHEREAS the said sum of £344 15*s.* was applied in defraying the expense of articling the said [*son*] as aforesaid, as the said [*son*] doth hereby acknowledge, and the sum of £ , part of the said sum of £151, has by the direction of the said [*father*] and [*son*] been applied by the [*trustees*] in satisfaction of the succession duty which will upon the death of the said [*father*] become payable with respect to the succession of the said [*son*] to the said sums of £350 and £150 New £3 per cent. Annuities, or to the money, stocks, funds or securities into which the same sums respectively have been or might have been converted as the said [*son*] doth also hereby acknowledge, AND WHEREAS the sum of £ , being the residue of the said sum of £151, the produce of the said sum of £150 New £3 per cent. Annuities, has been paid to the said [*son*] by the direction of the said [*father*], as the said [*son*] doth hereby acknowledge; AND WHEREAS the said [*father*] is desirous of making the appointment of the said sums of £344 15*s.* and £151, the produce of the said sales of £350 and £150 New £3 per cent. Annuities respectively, in favour of the said [*son*] hereinafter contained, and the said sums were so paid as aforesaid, freed from all claim and demand of the said [*father*] in respect of his life interest therein under the trusts of the said indenture of settlement; AND WHEREAS the said [*father*] *and* [*son*] have respectively agreed to execute the release hereinafter contained; NOW THIS INDENTURE WITNESSETH that, by virtue and in exercise of the power and authority for this purpose by the said indenture of settlement given to the said [*father*] as aforesaid, and of every other power or authority in any wise enabling him in this behalf, the said [*father*] DOTH hereby direct, appoint and confirm the said sums of £344 15*s.* and £151 sterling, the produce of the said sums of £350 and £150 (part of the sum of £5000 New £3 per cent. Annuities), which have been respectively so sold as aforesaid, unto the said [*son*] absolutely freed from all claim and demand whatsoever of the said [*father*]; AND THIS INDENTURE FURTHER WITNESSETH that, in pursuance and performance of the said agreement in this behalf, and for the considerations aforesaid, the said [*father and son*] do, and each of them doth, hereby testify and declare their consent to and approbation of the said several sales of the said sums of New £3 per cent. Annuities, and to the aforesaid applications of the

and of desire to appoint the said sums,

and agreement to execute release.

Appointment to the son.

Release of trustees.

produce thereof; And do, and each of them doth, release unto the said [*trustees*], their heirs executors and administrators, All actions, causes of action, accounts, claims and demands whatsoever, which the said [*father and son*] or either of them now have or hath, or which they or any of them, or the executors or administrators of them or of either of them, shall have upon or against the said [*trustees*], their heirs, executors or administrators, for or on account of the said several sums of £350 and £150 New £3 per cent. Annuities, or of the said several sales thereof respectively, or of the said several sums of money the produce of the same respectively; IN WITNESS, etc. (*a*). PRECED. XLVI.

(*a*) Above, p. 220, note. Notice of this deed should be given to the trustees of the settlement.

XLVII.

APPOINTMENT *by* FATHER *and* MOTHER *under Power in Settlement of Whole Fund in favour of one Infant Daughter, with Powers of Advancement and of Revocation.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, *A B*, Esq., commonly called The Right Hon. *A B* Viscount D., and *C D* his wife, commonly called the Right Hon. *C D*, Viscountess D., send Greeting: [*Recitals of the settlement, being one of a life policy and of the money to be produced by sale of land conveyed by deed of even date with settlement upon trust for sale—the trusts of the fund authorising an appointment to the children by the parents and the creation of a delegated power of advancement;* above, p. 110,—*of state of trust property,—of death of a trustee,—of issue of marriage two children,—and of one of them being otherwise provided for.*] (*a*) AND WHEREAS the said Viscount and Viscountess D. are desirous of making such an appointment to or in favour of the said Ethel B. as is hereinafter contained; NOW THESE PRESENTS WITNESS that, in order to effectuate the said desire, and in exercise of the power to the said *A B* Viscount D., and *C D* Viscountess D., for this purpose given by the hereinbefore-recited indenture of settlement, and of every or any other power enabling them in this behalf, the said *A B* Viscount D. and *C D* Viscountess D. DO hereby appoint that from and immediately after the death of the survivor of them the said *A B* Viscount D. and *C D* Viscountess D., the said policy of assurance and the money thereby assured, and the money to be produced by sale of the said messuage, land and hereditaments described in and expressed to be assured by the hereinbefore-mentioned indentures of etc., or the stocks, funds, and securities in or upon which the money to be received in respect of the said policy, and upon sale of the said messuage, land and hereditaments respectively as aforesaid, may in performance or exercise of the

Recitals.

Appointment of trust funds and hereditaments,

(*a*) As to the use of supplemental deeds, see below, p. 275.

trusts or powers of the hereinbefore-recited indenture of settlement be invested, SHALL, if the said Ethel B. shall have attained or shall thereafter attain the age of twenty-one years, or shall have married or shall thereafter marry, remain and be IN TRUST for the said Ethel B., her executors, administrators and assigns, AND THAT if at the death of the survivor of them the said Viscount and Viscountess D. the said Ethel B. shall be living, shall be under the age of twenty-one years and shall not have been married, then and in that case it shall be lawful for the said trustees or trustee for the time being of the hereinbefore-recited indenture of settlement, at any time or times while the said Ethel B. shall be living, shall be under the age of twenty-one years and shall not have been married, to raise out of any part or parts of the premises hereby appointed any sum or sums of money not exceeding in the whole £ , and to pay or apply the same for the benefit of the said Ethel B., as the said trustees or trustee for the time being shall think fit; PROVIDED ALWAYS, and the said *A B* Viscount D. and *C D* Viscountess D. do hereby declare, that it shall be lawful for the said *A B* Viscount D. and *C D* Viscountess D. at any time or times by deed, or for the survivor of them at any time or times after the death of such one of them as shall first die, either by deed or by his or her last will or any codicil thereto, executed according to the law of England for the execution of wills made therein, wholly or partially to revoke the appointment hereinbefore expressed to be hereby made; IN WITNESS, etc. (*c*).

to daughter at twenty-one or marriage.

Power of advancement (*a*).

Power of revocation (*b*).

(*a*) Treatise, 1049.
(*b*) *Ib.* 1434.
(*c*) See note, p. 220. Notice of this deed should be given to the Company which has granted the policy and to the trustees of the settlement.

XLVIII.

MORTGAGE *under* TRUSTS *of* PORTIONS TERM *to secure* MONEY *borrowed to pay* PORTIONS (*a*).

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN *A* of etc. and *B* of etc. of the first part, Emma *X* of etc., spinster, and Mary *X* of etc., spinster, of the second part, Edward *X*, of etc., esquire, of the third part, and [*mortgagee*], of the fourth part: WHEREAS by an indenture bearing date the day of 18 , and expressed to be made between *X* of the first part, *Y* his wife (then and therein called *Y Z*, spinster), of the second part, and the said *A* and *B* of the third part (being a settlement made upon the marriage then intended and soon afterwards solemnised between the said *X* and *Y* his wife, then *Y Z*, spinster); All those [*insert a copy of the description of parcels in the settlement*] were assured unto the said *A* and *B* and their heirs to uses which were in the indenture now in recital expressed, and were limited to take effect respectively until the said then intended marriage should be solemnised, and afterwards during the lives of the said *X* and *Y* respectively, with remainder to the use of the said *A* and *B* during the term of 500 years next ensuing the death of the said *X* without impeachment of waste, upon the trusts and for the intents and purposes and subject to the provisoes, agreements and declarations thereinafter expressed concerning the

Recital of settlement creating a term and trusts for raising money for portions.

(*a*) To the bare performance of the trust to raise money by mortgage the only necessary parties are the trustees of the term and the lender of the money. The concurrence of neither the portionists nor the owner of the estate can be required. A mortgage so made, however, would not contain any covenant for payment of either the principal money or interest. Consequently the loan might not be obtained on such favourable terms as might be consented to if those covenants were given. Possibly the trustees might be driven to a sale instead of a mortgage. Again, all parties may be glad to have it appear on the the face of the deed that the money borrowed to pay portions was paid directly to the portionists. For these reasons the concurrence of the portionists and of the owner of the estate is likely to be often obtained, though sometimes the owner of the estate may decline to covenant for more than the payment of the interest, which, indeed, in a case where he was only tenant for life, is all that he could be asked to covenant for. The owner of the estate if entitled to the fee might make the mortgage one of the fee should that be his pleasure; but he might not wish to take that course, or the mortgagee might prefer the term paramount to all charges the owner of the fee might have made to the fee subject to such charges. As to supplemental deeds, see below, p. 275.

same term, and from and immediately after the determination of the said term of 500 years, and in the meantime, subject thereto and to the trusts thereof, to the use of the first and all other sons of the said *X* by the said *Y* successively as they should be in priority of birth, and of the heirs male of the bodies of those sons respectively with other remainders over; And in order to facilitate the declaration thereinafter contained of the trusts of the said term of 500 years and otherwise of the intent of the parties thereto, It was by the said indenture of settlement Declared that every child of the said *X* by the said *Y* who being a son should live to attain the age of twenty-one years, or being a daughter should either live to attain that age or marry, and whether a son or daughter should not be one of the persons described in the clause next thereinafter contained and thereby excluded from the class of portionists, should be a person therein referred to as a portionist, And that every son or daughter or all the daughters of the said *X* by the said *Y* who should attain the age of twenty-one years, and should then or so soon as the said *X* should die, whichever should last happen, be or become entitled in possession by purchase under the indenture now in recital to an estate in tail male or in tail or to estates in common in tail in such (if any) hereditaments as should be then standing limited to such of the uses thereby limited as should be then subsisting, or to a corresponding interest or to corresponding interests either in such (if any) capital money as should have arisen under the Settled Land Act 1882, and should have been received for the trusts and purposes of the settlement thereby made, or should otherwise have become subject to a trust for investment in the purchase of land to be settled to the subsisting uses of that settlement or in investments of any such capital money as aforesaid; And every child of the said *X* by the said *Y* who if he or she had not previously either died or wholly or partially enlarged the estate in tail male or in tail or corresponding interest next thereinafter referred to would have been at the death of the said *X* either solely or in common with another person or other persons entitled by purchase under the indenture now in recital to an estate in tail male in possession or in tail in possession in such hereditaments as last aforesaid, or to a corresponding interest in such capital money or investments thereof as last aforesaid, But should have in the lifetime of the said *X* either wholly or partially enlarged the same estate in tail male or in tail or corresponding interest into an estate in fee simple or

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PREC. XLVIII. base fee or an absolute interest, or died without leaving any issue or a widow or husband him or her surviving, or died leaving his or her surviving issue capable of inheriting or becoming entitled to the last-mentioned estate in tail male or in tail or corresponding interest, should not be a portionist but should be excluded from the class of portionists; And it was by the said indenture of settlement agreed and declared that the premises were thereby limited to the said *A* and *B* for the said term of 500 years, UPON TRUST that if there should be any child or children of the said *X* by the said *Y* who should become a portionist or portionists, then the trustees should raise in the manner and at the times thereinafter specified, And as to every sum to be raised under that trust with interest thereon at the rate of 4 per centum per annum from the death of the said *X* or the day when the portionist for payment of whose portion or of part of it that sum should be raised should attain the age of twenty-one years, or if a girl marry, whichever of these two or in the case of a girl three events should last happen, the sum or sums of money thereinafter specified, (that is to say) If there should be one portionist and no more, the sum of £ sterling; If there should be two portionists and no more, the sum of £ sterling; And if there should be more portionists the sums in the said indenture for that purpose specified; And that the trustees of the settlement now in recital should raise the principal money so directed to be raised as aforesaid, or so much thereof as should not in exercise of the power in that behalf thereinafter contained have been previously raised, so soon as the portions and parts of portions for payment whereof respectively the same principal money should be required should vest in the persons who should become entitled thereto respectively, And it was by the said indenture of settlement also agreed and declared that the trustees thereof should raise such money as they or he should need, or should be thereby authorised to raise for a portion or portions or for part or parts of a portion or portions by (among other means in the said indenture specified) mortgage for all or any part of the said term of 500 years, of all or any hereditaments which should at the time or respective times at which the same money should be raised be subject to such of the uses thereby limited as should be then subsisting, And that no mortgagee of whom the trustees of the settlement now in recital should borrow any money purporting to borrow the same in

exercise of the power to raise money by mortgage for all or any part of the said term therein contained should be bound to inquire whether the money so borrowed was needed or authorised to be borrowed, or to see to the application or be responsible for the non-application or misapplication thereof; And it was by the said indenture of settlement declared that the trustees thereof should stand possessed of and be interested in the money and interest so to be raised as aforesaid in trust for such one or more exclusively of the others or other of the portionists and of the issue of any deceased portionist or portionists, and otherwise as in the said indenture of settlement was expressed, and as the said *X* should by any deed or deeds or will or codicil appoint, and in default of such appointment in trust for the portionists in equal shares, And after making and creating certain other provisions and powers which have not become or been and will not now become or be applicable or exercised, it was by the indenture of settlement now in recital declared that, subject to the trusts thereinbefore contained and to the rights of the trustees of the indenture of settlement now in recital respectively and of the executors or administrators of them respectively by any of the ways or means whereby those trustees were thereinbefore authorised to raise money for portions to raise and reimburse themselves or himself all costs and expenses incurred in relation to the trusts aforesaid, the trustees of the indenture of settlement now in recital should permit the person or persons who might for the time being be entitled to the remainder or reversion of the hereditaments comprised in the said term of 500 years expectant on the determination thereof to receive for his and their own use and benefit so much of the same rents and profits as should from time to time remain after answering the trusts aforesaid. AND WHEREAS there was issue of the said *X* by the said *Y* three children—the said Edward *X* their only son, and two daughters the said Emma *X* and Mary *X*, and no other child—and all the said three children respectively attained the age of twenty-one years in the lifetime of the said *X*, who having survived the said *Y* died on the day of last without having exercised the power of appointing the said sum of £ , which was by the hereinbefore-recited indenture of settlement so limited to him as aforesaid; AND WHEREAS the said *A* and *B* being desirous of performing the trust to raise the sum

—of family events constituting title of portionists.

—Agreement by trustees for loan.

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—payment of interest on portions.

—payment of succession duty.

(*a*) The trustees being responsible for the payment of the succession duty (16 & 17 Vict. c. 51, s. 44), they must either be satisfied that it is paid or retain money for its payment. Till the mortgagee advances his money there is no fund out of which the duty can be paid. It must therefore be advanced by some one, and the most proper persons to make the advance are the portionists themselves.

(*b*) Below, p. 251.

(*c*) If there has been any change in the hereditaments subject to the settlement by means of sale, exchange, partition or purchase, the description of parcels will need variation accordingly.

his executors, administrators and assigns during the residue still unexpired of the said term of 500 years next ensuing the death of the said *X*, for which the premises were so limited to the use of the said *A* and *B*, their executors, administrators and assigns as aforesaid, subject to the proviso hereinafter contained; PROVIDED ALWAYS that if the said *A* and *B* or other the trustees or trustee for the time being of the said term of 500 years shall on the day of next pay to the said [*mortgagee*], his executors, administrators or assigns, the sum of £ , sterling with interest for the same from the date of these presents, at the rate of £ , per centum per annum without any deduction (except in respect of property or income tax), the [*mortgagee*] or his personal representative or representatives or his or their assigns, will or shall thereupon or at any time thereafter, at the request and costs of the said *A* and *B*, their executors, administrators or assigns (*b*), reassign the said messuages, farms, lands, hereditaments, and premises, hereby assigned and conveyed unto the said *A* and *B*, their executors, administrators or assigns, or other the trustees or trustee for the time being of the said term of 500 years, or as they or he shall in that behalf direct for the then residue of the said term; AND the said Edward *X* doth hereby covenant with the said [*mortgagee*] that the said Edward *X*, his heirs, executors or administrators, will or shall on the day of next pay to the said [*mortgagee*], his executors, administrators or assigns, the aforesaid sum of £ , with interest for the same from the date of these presents at the rate of £ per centum per annum without any deduction (except in respect of property or income tax), AND THAT if the said principal sum of £ shall not be fully paid on the day of next, the said Edward *X*, his heirs, executors or administrators, will or shall thenceforth, so long as the same sum or any part thereof shall remain unpaid, pay to the said [*mortgagee*], his executors, administrators or assigns, interest at the rate of £ per centum per annum for the said sum of £ , or for so much thereof as shall from time to time remain unpaid, by equal half-yearly payments on the day of and the day

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Proviso for redemption (*a*).

Covenant to pay principal and interest.

(*a*) As the creation of the term was not accompanied by any proviso for cesser, there is no need to make the term cease on payment of the money, and it seems to be the better course to insert the proviso for redemption in the common form which will by virtue of the ultimate trust of the term enure to the benefit of the successive owners of the inheritance.

(*b*) If the trustees should be put to any such costs they could recover them out of the estate under the trusts of their term.

PREC. XLVIII. of in every year, together with a proportionate sum for the like interest up to the time when the said principal sum of £ shall be paid, without any deduction except in respect of property or income tax (*a*); IN WITNESS, etc.

(*a*) Whether there should be any other of the provisions common in mortgages—such as a proviso for acceptance of interest at a lower rate on punctual payment, provisions with reference to insurance, and a prohibition of building leases—must, like the covenants in the precedent, be matter for negotiation between the owner of the property subject to the term and the mortgagee.

XLIX.

RELEASE *by* PORTIONISTS, *when paid off, of the* HEREDITAMENTS *charged.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, *A, B, C and D* of send greeting [*Here recite that H by his will bearing date the day of* , 18 , *in pursuance of a power given him by an indenture bearing date the day of* , 18 , *and expressed to be made, etc., charged all his estates with the raising of* £5,000, *with interest thereon from the day of his death, at the rate of* £4 *per centum per annum,—and subject thereto had devised his said estates to X in fee,—that the testator died on the day of* , 18 , *without having revoked or altered his said will, which was on the day of* , 18 , *proved in the Principal Registry of the Probate Division of the High Court of Justice,—that the succession duty on the successions of the said A, B, C* and *D respectively, as appears by an account of the officers of Inland Revenue, had been paid*]; AND WHEREAS the sum of £5,000 has this day been paid by the said *X* to the said *A*, *B*, *C* and *D*, in the parts, shares and proportions hereinafter mentioned, (that is to say) the sum of £1,250 part thereof to the said *A*, the sum of £1,250 further part thereof to the said *B*, the sum of £1,250 further part thereof to the said *C*, and the sum of £1,250, residue of the said sum of £5,000, to the said *D* (as they the said *A*, *B*, *C* and *D* do hereby respectively admit and acknowledge); NOW THESE PRESENTS WITNESS that in consideration of the premises the said *A*, *B*, *C* and *D* by these presents Do and every of them Doth release All and singular the said estates and hereditaments so by the said will of the said *H* charged as aforesaid of and from the said sum of £5,000 so charged and directed to be raised as aforesaid, And all interest for the same and every part thereof respectively, and of and from all actions, causes of action, claims and demands for or in respect of the same or any part or parts thereof respectively or in anywise relating thereto; IN WITNESS, etc.

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NOTES.

I.

ADDITIONS TO BE MADE TO THE TREATISE AT THE PAGES OF IT REFERRED TO AT THE HEADS OF PARAGRAPHS BELOW, PARTLY IN SUPPLY OF OMISSIONS, BUT CHIEFLY IN STATEMENT OF ENACTMENTS PASSED IN THE SESSION OF 1887, *AND OF CASES REPORTED SINCE THE PUBLICATION OF THE TREATISE.*

P. **14**, *after line* **2** *from top add:—*

Estate Act.

If the preamble be not proved, or a petitioner be unreasonably or vexatiously subjected to expense in defending his rights proposed to be interfered with by the bill, he may in certain cases get payment of his costs; and on the other hand, if the preamble be proved, vexatious opposition may in some cases be punished by the maker of it being subjected to the payment of costs. 28 & 29 Vict., c. 27; *Mallet* v. *Hanley*, 18 Q. B. D. 303, 787; 35 W. R. 201, 601.

P. **18**, *after line* **7** *add:—*

See *Re Dash*, 57 L. T., N. S. 219.

P. **30** (*b*) *add:—*

Infants' settlements.

In re Tottenham's Estate, 17 L. R. I. 174.

P. **37**, *after paragraph ending with line* **8** *add:—*

An infant tenant in tail in Ireland, on his marriage, covenanted that his wife should have a jointure annuity out of the land. Immediately on coming of age, in 1836, he disentailed the land, and soon afterwards executed an appointment of a new trustee of the articles. It was held that he had ratified them. *In re Tottenham's Estate*, 17 L. R. I. 174.

P. **65**, *at end of page add:—*

Upon the petition of a married woman who had been a ward of Court and the trustees of a settlement made under the Infants' Settlements Acts for the transfer to the trustees, after payment of costs, of certain funds, the husband asked that the costs of the settlement might be included in those to be paid out of the fund. His counsel said it was in accordance with the practice of the Court to order the costs of a settlement of the property of a female ward to be paid out of her property, citing *Anon.* 4 Russ. 473; Treatise, 1638. On the authority of that case the judge made the order asked. *De Stacpoole* v. *De Stacpoole*, 37 Ch. D. 139, s. c. nom. *De Stacpoole* v. *Seymour*, 36 W. R. 320.

Marriage consideration.

P. **79**, *after line* **7** *from bottom add:—*

Since the foregoing observations were printed a case has been heard before Mr. Justice Kay, in which a man on his second marriage had, with the concurrence of his then intended wife, conveyed land to trustees for the benefit of his children by a former marriage. He had subsequently mortgaged the land: the mortgagee sold under his power and the purchaser declined to complete on account of the settlement. The learned judge held that the above-mentioned trusts were voluntary, and that the title of the mortgagee prevailed over them. *In re Cameron and Wells*, 37 Ch. D. 32.

Imperfect gifts.

P. **91.**

An "interest" within the meaning of that word in 44 & 45 Vict., c. 12, s. 38, subs. 2 (c) is reserved by a voluntary settlor to himself during his life, where the trust during that period is to pay the income for or towards the benefit, maintenance and personal support of the settlor, his wife or any future wife, and his child or children or other issue for the time being in existence, or at the discretion of the trustees for or towards the benefit, maintenance and personal support of such one or more to the exclusion of the others or other of such objects of the discretionary trust as the trustees shall think proper. *Att.-Gen.* v. *Heywood*, 19 Q. B. D. 326; 35 W. R. 772.

P. **96** (*a*) *add:—*

Gason v. *Rich*, 19 L. R. I. 391.

P. **96.**

As to what will amount to a declaration of trust, see *Ex-parte Todd, In re Ashcroft*, 35 W. R. 676; and cases cited there by Cave, J., p. 677.

P. **97**, *after line* **6**, *add:—*

In a case where a mistress made a promissory note payable on demand to her cook, and gave it to her solicitor whom she had appointed an executor of her will, and desired him not to mention the matter to any one except the cook, but to retain the note till her death and then give it to the cook if she should remain till that time in the promissor's service, the maker of the note having died and the cook having remained in the mistress's service, North, J., held that the mistress had made her solicitor a trustee for the cook. *In re Richards, Shenstone* v. *Brock*, 36 Ch. D. 541; 36 W. R. 118. It is, however, to be noted that there were circumstances from which the inference was drawn that the cook gave a valuable consideration for the note. The remark of the learned judge that it was not necessary to consider what the power of the mistress might have been if she had changed her mind throws doubt on the case as a contribution to general law.

P. **98**, *after footnote* (*f*).

A deed whereby the owner of shares in a foreign railway company stated his desire to settle them, and that for that purpose he was about to transfer them to trustees, which statement was followed by an agreement that the trustee should stand possessed of the shares on the proposed trusts when and as soon as they should be transferred to them, did not, in the opinion of Cave, J., and the majority of the Court of Appeal, *though notice* was given to the railway company, constitute a valid settlement. Fry, L.J., said it was unnecessary to decide the point, but it does not appear that he dissented. *Ex-parte Todd, In re Ashcroft*, 35 W. R. 676.

P. **99** (*g*), *add:—*

And in stock of company. *Nanney* v. *Morgan*, 56 L. J. Ch. 805.

P. **103**, *after line* **19** *add:—*

A recent example of the Court's action in setting aside a voluntary settlement on account of indications of the settlor's

solicitor having failed to give him sufficient information of the operation of the settlement is afforded by *Horan* v. *MacMahon*, 17 L. R. I. 641; reversing M. R. 15 *ib.* 471, noted in Additions to Treatise, p. ci.

P. **106** (*b*), *add:*—

See also *Horan* v. *MacMahon*, 17 L. R. I. 641.

Voluntary settlement.

P. **112**, *on line* **13** *from bottom, after* (*i*) *add:*—

The concurrence by a husband in a settlement by his wife of land to which she was entitled for her separate use, under which settlement he took an estate after her death determinable on his bankruptcy instead of the estate by the curtesy to which he might have become entitled. *Beckett* v. *Tasker*, 19 Q. B. D. 7; 36 W. R. 158.

Consideration.

P. **115**, *line* **9**, *add:*—

As more recently has a confirmation by a tenant in tail of charges for portions made in excess of his power by the preceding tenant for life. *Blake* v. *Blake*, 19 L. R. I. 261. And a settlement by a man on his second marriage, with the concurrence of his then intended wife, on his children by a former marriage. *In re Cameron and Wells*, 37 Ch. D. 32; 36 W. R. 5; 57 L. J. Ch. 69.

Representations.

P. **133**, *after line* **11** *add:*—

A letter written by a man about to marry to his intended wife, whom a few days afterwards he married, that he thereby willed and bequeathed to her after his death some specified cottages, and directing her to keep the letter as a proof of his intention in case of any sudden change occurring and rendering him incapable of the performance of so important a document, was held not to be a contract in consideration of marriage. *Vincent* v. *Vincent*, 35 W. R. 7.

P. **138** (*e*), *add:*—

Cobden v. *Bagwell*, 19 L. R. I. 150.

P. **140** (*a*), *add:*—

But see *Mills* v. *Fox*, 37 Ch. D. 153; 36 W. R. 219.

P. **213**, *after first paragraph of Section VIII., add:—*

Covenant to bequeath.

A covenant in a marriage settlement to devise and bequeath the residue of the covenantor's property to the trustee of the settlement does not constitute a debt, and the residue is liable to probate duty. *Att.-Gen.* v. *Murray*, 20 L. R. I. 124.

P. **215** (*d*), *add:—*

There being a covenant on marriage by the husband's father to settle an equal child's share rateably, and in proportion to his several children, of all the property he should die possessed of, it was held that in calculating the share at the covenantor's death advancements made by him in the interval to some of his children were not to be taken account of. *Stephens* v. *Stephens*, 19 L. R. I. 190.

P. **225**, *before line* **17** *from bottom insert:—*

Covenant to pay.

When on marriage the intended husband covenanted to bequeath out of his real and personal estate £20,000, with interest from his death, to the trustees of a settlement, to be held upon certain trusts, and also, subject to the payment of that sum and interest and his debts, to devise and bequeath the residue of his real and personal estate to be held on the same trusts, it was held, after his death having performed his covenants, that the residue was not a debt, and was liable to probate duty. *Att.-Gen. for Ireland* v. *Murray*, 20 L. R. I. 124.

Pp. **229**, **230**.

Covenant to settle after-acquired property.

In a recent case the question whether a covenant to assign by way of mortgage all the property to which the covenantor should become entitled during the subsistence of the security would be enforced by the Court was discussed. One objection was that such a contract is too vague to be specifically performed; another that it was against public policy to compel performance of such an engagement. The allowance of such covenants in marriage settlements was, it was urged, by way of exception from the general rule counsel sought to establish. Lord Justice Cotton, however, could not agree with the suggestion that marriage settlements were favoured instruments; and accepting them as evidence of the law, said it appeared to him impossible to hold that a covenant which is not too vague to be executed when it is found in a settlement is too vague when found in a mortgage. The objection that the Court might consider it

wrong to enforce a contract which if fully carried into effect would prevent the maker of it from paying his debts and deprive him of the means of subsistence, the Lord Justice deemed inapplicable to an agreement to settle on a wife and her children all property that came to her during the marriage, which could not be considered unreasonable. *In re Clarke, Coombe* v. *Carter*, 36 Ch. D. 348, 352, 353.

P. **232** (*c*), *add:*—

But see *Macpherson* v. *Macpherson*, 55 L. J. Ch. 922.

P. **233** (*c*), *add:*—

Macpherson v. *Macpherson*, 55 L. J. Ch. 922.

P. **238** (*c*), *add:*—

Consider observations of Stirling, J., in *Mills* v. *Fox*, 36 W. R. 219, 221.

P. **252**, *after line* **14** *add:*—

Recently, where a husband on marriage covenanted to join his wife at the request of the trustees of the settlement in settling her after-acquired property, and it was declared that until such settlement the property should be held upon the trusts upon which it was covenanted to be settled, Kay, J., held that the wife's after-acquired separate property was not bound by the covenant. *Macpherson* v. *Macpherson*, 55 L. J. Ch. 922.

P. **253**, *after line* **13** *add:*—

The Court of Appeal has approved and followed Mr. Justice Pearson's decision. Lord Justice Cotton, moreover, doubted whether, independently of s. 19, property which became a wife's separate property by virtue of s. 5 of the Married Women's Property Act 1882 only was property "given to her or settled to her separate use" within the meaning of those words, in an exception from a covenant to settle after-acquired property entered into before the passing of the Act. *In re Whitaker*, 34 Ch. D. 227. See also *In re Queade's Trusts*, 33 W. R. 816, and *Hancock* v. *Hancock*, 36 W. R. 166, stated below with reference to p. 750 of Treatise.

P. **256** (*e*), *add*:—

Re Gerard, 32 Sol. J. 241; W. N. 1888, p. 35.

P. **272**, *line* **11**, *add*:—

A wife's concurrence with her husband in a sale and conveyance by an acknowledged deed of her land waives her equity to a settlement out of it. *Tennent* v. *Welch*, 36 W. R. 385.

P. **277**, *after line* **8** *add*:— Wife's equity.

In Ireland the Vice-Chancellor in one case, on the application of a wife for many years deserted by her husband, ordered payment to her by way of advance of a small part of the share to which she was entitled of a fund in court. *Barker* v. *Vogan*, 17 L. R. I. 447.

P. **277**, *at foot add*:—

Though since the Judicature Act came into operation every branch of the High Court is a court of equity as well as a court of law, and in case of any conflict between the rules of equity and those of common law the rules of equity are to prevail, yet the doctrine of a wife's equity to a settlement is not thereby so extended as to entitle her to resist a claim by her husband's mortgagee for the title-deeds of her leaseholds and for registration of her shares in a company. *Heron* v. *Heron*, 31 Sol. Journ. 644; W. N. 1887, 158.

P. **281** (*k*), *add*:— Parties and recitals.

Re Earl of Durham, 57 L. T., N. S. 164.

P. **295**, *after paragraph ending line* **8**, *insert*:— Covenants in transfers of mortgage.

According to what was, I believe, for many years before the passing of Earl Cairns' Conveyancing Act of 1881, the most usual practice, transfers of mortgages to which the mortgagors were not parties contained covenants by the transferors that they had not incumbered either the debts or the securities for them, and no other covenants for title. This opinion is supported by the forms in the books of precedents in most general use in those years: 2 Dav. Conv., 2nd ed. 1048; 3 *ib.* 592; 1 Prid. Conv., 7th ed. 629; Housman's Precedents, 177; and by a MS. precedent in my possession appearing to have been settled in 1823. The practice may be open to criticism, but

assuming it to have been established, the proper manner of continuing it since the commencement of Earl Cairns' Act seems to me to be that adopted above, p. 163. A covenant against incumbrances of the mortgaged hereditaments may be imported into the deed by making it express that the transferor conveys as a mortgagee, which he is of that subject-matter: 44 & 45 Vict. c. 41, s. 7 (1) F.; but he cannot with accuracy be expressed to convey the debt as a mortgagee. Of that he is the beneficial owner. According to the above-mentioned practice, however, he does not enter into any other covenant concerning the debt than that he has not incumbered it, and as that cannot be implied it must be expressed. Whether the practice should be altered is another question. The alternative course, in such a case as that contemplated in this precedent, where the transferor is beneficially entitled to and settles the debt on his marriage, is for him to convey the debt and interest as "beneficial owner," and by that means to enter into the same covenants for title as a vendor of other property (Treatise, 320, 324). In a MS. copy of a transfer by a man on his marriage to the trustees of a settlement, which I believe to have been settled in 1827 by the late Mr. Bellenden Ker, and in such a transfer printed in 1833 in 9 Jarm. By. Conv., 2nd ed., 148, there are such covenants; and transfers of mortgages printed in 1840 in 6 Jarm. By. Conv., by Sweet, 327, and in 1857 in Hughes' Prec. in Conv. 342, contain covenants by the transferors that they have not received the mortgage debts.

Methods of bringing nt settlement.

P. **299**, *after line* **17** *from bottom add:—*

If registration is necessary it must be repeated every five years (41 & 42 Vict., c. 31, s. 11); but an omission to register or re-register, if accidental or due to misadventure, may be rectified. *Ib.* s. 14; *In re Dobbin's Settlement*, 56 L. J. Q. B. 295.

P. **301**, *in line* **16**, *after* "companies" *insert:—*

Stock of a company to which the Companies Clauses Consolidation Act 1845 is applicable does not become legally vested in a transferee immediately on the execution of a transfer by the prior owner. The deed does not put the transferee into the position of the transferor until it has been left with the company's secretary and accepted by him as properly complying with the Act. It is not, indeed, necessary to rely

on registration as a requisite, because when the transfer has been left with and accepted by the secretary it is the duty of the company to register it. *Nanney* v. *Morgan*, 56 L. J., Ch. 805. Cf. *The Colonial Bank* v. *Hepworth*, 36 Ch. D. 36; 57 L. T. 148; *Williams* v. *The Colonial Bank*, 36 Ch. D. 659; 57 L. T. 188. As to what documents of title to shares may be negotiable see also *London and County Banking Co.* v. *London and River Plate Bank*, 20 Q. B. D. 232.

P. **303**, *line* **9.**

With reference to a distringas, Mr. Justice Kekewich lately said: "The object is that any one who thinks he has a claim to a fund standing in the name of trustees, or may have an interest in it, may stop it while he makes inquiries or takes proceedings, not being certain whether he is entitled or not. The distringas does not operate as an injunction. If any one wishes to transfer the fund notice has to be given to the man who put on the distringas, and then, if he does nothing within a limited time, the distringas ceases." The learned judge added that he did not think that a mere affidavit, made because a solicitor believes a man is beneficially interested in some bank shares, amounts to an acceptance of those shares so as to estop him from subsequently disclaiming. *Hobbs* v. *Wayet*, 36 Ch. D. 256; 36 W. R. 73, 74.

P. **317** (*c*), *add:*—

See an appointment under this section. *Schultze* v. *Schultze*, 56 L. J. Ch. 356.

P. **320** (*a*).

With reference to the rights created by the Customs Annuity and Benevolent Fund Act and policies effected under it see *Urquhart* v. *Butterfield*, 36 Ch. D. 55, and cases therein cited. Reversed 57 L. T. N. S. 780.

P. **323**, *before line* **7** *from bottom insert the following sub-sections of the Conveyancing Act* 1881 (44 & 45 *Vict.*, *c.* 41, *s.* 7):— Covenants for title.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as com- On conveyance by trustee or mortgagee.

mittee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

Against incumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary

assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

P. **330**, *at foot, add:—*

Additions to settled property.

The proceeds of sale of new shares in a gas company purchased by the attorney of a sole trustee in his own name and with his own money were held, after repayment of the price with interest, less the dividends received by the purchaser, to constitute an addition to the settled fund. *Re Bromley, Sanders* v. *Bromley*, 55 L. T. 145.

P. **330** (*g*) *add:—*

Cf. *In re Pugh, Banting* v. *Pugh*, W. N. 1887, 143.

P. **337**, *at end of last paragraph add:—*

Public policy.

De Bensaude v. *De Bensaude*, 32 Sol. J. 42.

P. **346**, *after line* **6** *from bottom add:—*

Donees of powers.

It seems hardly necessary to say that a power conferred upon several persons cannot be exercised by some only of the donees; but a reference to this obvious general rule is suggested by the apparent exception from it made by the enactment in the Copyhold Act 1887, that where "lords or tenants are trustees and one or more of such trustees shall be abroad or shall be incapable or refuse to act," the other trustee or trustees "may do what is necessary to effect enfranchisement": below, p. 260.

P. **352**, *after line* **9** *add:—*

Stat. 50 & 51 Vict. c. 73, s. 45: Trust copyholds of inheritance not to descend as chattels real.

By the Copyhold Act 1887 (passed 16th September, 1887) it was enacted as follows:

> The thirtieth section of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the Court rolls of any manor upon any trust or by way of mortgage.

Upon the passing of this Act the Conveyancing Act 1881 ceased to apply to copyholds. Consequently copyholds vested in a sole trustee of them who died in 1884, not having been disposed of by his executors before the passing of the Copyhold Act 1887, could be disposed of by the persons in whom they would have vested if the Conveyancing Act had not been passed. North, J., however, thought that a disposition made

by the executors of the deceased trustee before the 16th September, 1887, would have been valid. *In re Mills' Trusts*, 37 Ch. D. 312.

Duration of powers.

P. **366**, *after line* **15** *from bottom add:--*

Where a testator had devised land in trust for his wife for her life and then for such of his children as should be then living, the share of each of them to be vested on his death but to be paid or transferred to them on the youngest attaining the age of thirty years, and the testator had empowered his trustees at any time, but during the life of his wife with her consent, to sell, Kay, J., the wife having died twenty-seven years after the testator, and all the children, except one who had settled her share, having previously died, held that the trustees could within a reasonable time after the death of the wife exercise the power of sale for the purposes of division. *In re Henzell, Holgate* v. *Humphries*, W. N. 1887, 240.

Disabilities of donees of powers.

P. **386** (*d*).

A power of sale vested in a lunatic mortgagee in fee can be exercised under this section, but the estate will be transferred to the purchaser by a vesting order under the Trustee Act 1850. *In re Harwood*, 35 Ch. D. 470.

Methods of exercising powers.

P. **395**, *after last line add:—*

Nor is the use of the word "appoint" in the general bequest enough to show such an intent. *In re Richardson's Trusts*, 17 L. R. I. 436. With the doctrine stated in this paragraph, however, that which has been settled to the effect that a general power may be exercised by a will executed before the power was created must be compared. 1 Jarm. Wills, 4th ed., 336, 685; *Airey* v. *Bower*, 12 App. Ca. 263.

P. **395** (*d*), *add:—*

A general devise was held to operate in exercise of a special power in *Martin* v. *Martin*, 19 L. R. I. 72.

Custody of property.

P. **410**, *before line* **4** *from bottom insert:—*

The nature of the rights and obligations incident to a delivery of trust money for investment to a firm of solicitors, of which

one of the trustees is a member, is in part disclosed by the following case, in which the firm who received the money misappropriated it and afterwards became bankrupt. Proof by the other trustees against both the joint estate of the firm and the separate estate of the member of it who was their co-trustee was allowed. It was held that there was a joint contract by the firm and a distinct liability of the trustee member of it, founded on his duty as a trustee. It was not necessary to determine whether, in the words of Bramwell, L.J., in *Ex-parte Adamson* (8 Ch. D. 807), trustees are held to undertake jointly and severally for the performance of their duties. *In re Parker, Ex-parte Sheppard*, 19 Q. B. D. 84, 87.

P. **410** (*c*).

Cf. *Magnus* v. *Queensland National Bank*, 35 W. R. 752, 754.

P. **411.**

Upon the doctrine of *Speight* v. *Gaunt* see *Re Partington*, 57 L. T., N. S. 654; *Billing* v. *Brogden*, 31 Sol. J. 716.

P. **412.**

Another risk involved in the purchase of certain securities dealt in on the Stock Exchange is exhibited in a recent case, in which executors of a holder of American railway shares had signed blank transfers indorsed on the share certificates and delivered them to their brokers in order that they might procure the shares to be registered in the names of the executors. The brokers fraudulently deposited the transfers with their own bankers as security for a debt, and then became bankrupt. The bankers were held to be entitled to hold the certificates. *Williams* v. *Colonial Bank*, 36 Ch. D. 659.

P. **426**, *note* (*c*), *add:*—

Billing v. *Brogden*, 31 Sol. J. 716.

P. **428**, *to end of Section VI. add:*— Retention of investments.

Where a testator had directed his trustees to retain his shares in a specified company, and after his death a bonus was declared on the shares, and to increase the share capital new shares were issued and offered to the holders of old shares rateably at par,

they being worth more in the market, Stirling, J., held that the taking of the new shares would result in a benefit to the testator's estate which the trustees would do right to secure, but he could not authorise them to hold the shares as an investment. Their duty would be to realise them as speedily as possible. *In re Pugh, Banting* v. *Pugh*, W. N. 1887, 143.

Local Loans Stock.

P. **448**, *before line* **15** *from bottom insert:—*

In 1887 provision was made (50 & 51 Vict., c. 16) for the issue of a new stock of Perpetual 3 per cent. Annuities, in the Act called Local Loans Stock: *ib.* s. 8 (1). The dividends were to be payable quarterly out of the Local Loans Fund, and if that were insufficient, out of the Consolidated Fund: *ib.* (2). The stock was not to be redeemable for twenty-five years from the 31st March, 1887: *ib.* (3), ss. 19, 20; but afterwards at par at any time after not less than one month's notice, in sums each of not less than £5,000,000 of the stock: *ib.* s. 8 (4). The National Debt Commissioners may from time to time give Local Loans Stock in exchange for other 3 per cent. annuities: *ib.* ss. 10, 17 (1), (5) (*b*).

Real securities.

P. **462**, *after line* **19** *add:—*

And if it be exceeded it is for the trustee to justify his conduct. Stirling, J., *In re Partington, Partington* v. *Allen*, 57 L. T., N. S. 654.

P. **463**, *line* **13**, *after the word* "loan" *add:—*

Nor should he adopt such advice blindly, but should exercise his judgment upon it, as a prudent man should: Stirling, J., in *Re Partington, Partington* v. *Allen*, *u.s.* By this observation I do not understand the learned judge to have meant that the trustee is himself to exercise that function of estimating value which in such a case the valuer is supposed to be more competent to perform, but that the trustee must consider whether the valuer is competent and trustworthy, and whether his valuation shows that he rightly apprehends the duty he has to perform and apparently has performed it. Even so the burden on trustees is heavy. What the law requires of them recent cases have shown to be more than they have generally apprehended, and more than in many cases they can do; for many trustees are not the persons skilled in business generally

which the propounders of the law seem to suppose them to be. If it is true that they must be as universally credited with knowing the two-thirds and one-half rules adopted by the Court, and its distrust of value dependent on the use for some profitable business of the property proposed as a security, as they are in fact generally ignorant of those rules and that distrust; and, assuming them to have that knowledge from which really they are so free, they can hardly be deemed to to have exercised their judgment as a prudent man would, if they lend upon the faith of a valuation which only states that the property is an ample security for the proposed loan. What the law should be is a question of great difficulty. See *Brogden* v. *Billing*, stated in 31 Sol. J. 716.

P. 463.

In re Whiteley, affirmed nom. *Learoyd* v. *Whiteley*, in H. L. 12, App. Ca. 727, so far as it related to investment upon mortgage of brickfields and the rate of interest. As to liability of a solicitor for his instructions to the valuer see *Pretty* v. *Fowke*, 31 Sol. J. 693.

P. 463 (*i*).

Cf. *Learoyd* v. *Whiteley*, *u.s.*; *Re Partington*, *Partington* v. *Allen*, 31 Sol. J. 704. Is not every estimate of future value speculative?

P. 464 (*d*).

In re Whiteley, affirmed in H. L. 12, App. Ca. 727. See addition to p. 463.

P. 469, *after line* 19 *add:*—

India 3½ per cent. Stock.

Again, in 1887, the Secretary of State for India offered to holders of India 4 per cent. stock like amounts of India 3½ per cent. stock. By 50 & 51 Vict., c. 11, s. 2, holders of the former stock were authorised to accept the latter provided they had the consent of persons without whose consent they were not authorised to change their investments, or, where the holder was a trustee without power under the terms of his trust to vary investments, with the consent either of every person interested in the stock, or, in case of disabilities, of such guardians, committees, curators and judges as are in the section specified. A power, whether subject or not to any restrictions or conditions,

to invest in India 4 per cent. stock shall extend to authorise an investment subject to the same conditions and restrictions (if any) in India $3\frac{1}{2}$ per cent. stock: *ib.* s. 3. Stock taken in exchange and the interest thereon is made subject to the same trusts, charges, rights, distringas and restraints as affected the stock cancelled and the interest thereon: s. 4. Provisions were added making existing powers of attorney and requests for post dividend warrants applicable to stock taken in exchange, to the proceeds of its sale and to the dividends on it: ss. 5, 6, 7; and the conversion of sums of stock not exceeding £1000 and belonging to infants was made compulsory: s. 8.

Metropolitan Consols.

P. **472** (*b*) *add:*—

50 & 51 Vict., c. 31.

Scinde, etc., Railway Co.

P. **476**, *after line* **22** *add:*—

Upon the working out of the purchase by the Secretary of State of the property of the Scinde, Punjaub and Delhi Railway Company, a person entitled to partly paid-up shares in the undertaking claimed an aliquot part of the price calculated on the footing of the nominal value of his shares; but it was held by the Court of Appeal, affirming the decision of Mr. Justice Kekewich, that the price was to be distributed equally according to the contributions by the shareholders to the capital of the Company. *Sheppard* v. *Scinde, Punjaub, and Delhi R. C.*, 36 W. R. 1.

Investment in purchase of land.

P. **497** (*h*).

See however, note of *Ferguson* v. *Ferguson*, entered below, for addition to p. 915.

P. **503**, *after line* **9** *add:*—

Or where cottages having been purchased by the promoters, new ones were needed for the estate. *In re Earl de Grey's Entailed Estate*, W. N. 1887, 241.

P. **507**, *line* **8** *from bottom, after word* "obtained" *add:*—

Either by summons in chambers or by petition, as to which see *In re Earl de Grey's Entailed Estate*, W. N. 1887, 241.

P. **543**, *line* **13**, *add:—*

Power to lease.

Where donees of a power to lease in possession at the best rent, being also authorised to contract to grant leases pursuant to the power, had granted a lease with a covenant for renewal, Kay, J., held that when the time for renewal came only a lease at "the best rent" then obtainable could be granted. *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519.

P. **556** (*d*), *before* "but" *in line* **2** *of note, add:—*

Gas Light and Coke Co. v. *Towse*, 35 Ch. D. 519.

P. **557** (*c*), *add:—*

Gas Light and Coke Co. v. *Towse*, 35 Ch. D. 519, 541.

P. **561** (*d*), *add:—*

Gas Light and Coke Co. v. *Towse*, 35 Ch. D. 519.

P. **564**, *line* **5** *from bottom, add:—*

Or where a lease under a power to lease in possession at the best rent contained a covenant for renewal, which Kay, J., held authorised only a renewal at the best rent obtainable at the time of renewal, and not, as the lessees maintained, at the original rent. There was no "mistake," "inadvertence," or "ignorance of title"; the parties, knowing what the powers were, chose to take their lease in the form in which it was. *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519, 540.

P. **568**, *after line* **4** *from bottom, add:—*

Power to enfranchise.

The Copyhold Act 1887 contains the following enactment:

> Anything by the Copyhold Acts required or authorised to be done by the lord of a manor, or the tenant or owner of any land or right, may be done by such lord or tenant or owner, notwithstanding that he may be a trustee for any person, or that his estate in such manor or land be only a limited estate; and the guardian of an infant lord, tenant, or owner, and the committee of the estate of a lunatic lord, tenant, or owner, shall have full power to do on his behalf anything by the said Acts required or authorised to be done by such infant or lunatic; and a married woman, being lady of the manor, or tenant of any land or right of copyhold or cus-

Stat. 50 & 51 Vict., c. 73, s. 39. Provision for cases of trustees, infants, lunatics, and married women.

Stat. 50 & 51 Vict., c. 73,

tomary tenure, shall for the purposes of the said Acts be deemed to be a *feme sole*.

S. 40. Where one or more trustees shall be abroad or shall be incapable or refuse to act, the other trustees may act.

When either the lords or the tenants are trustees, and one or more of such trustees shall be abroad or shall be incapable or refuse to act, any proceedings necessary to be done by such trustees for effecting any enfranchisement under the Copyhold Acts may be done by the other trustee or trustees, as the case may be.

P. **569**, *line* **7** *from bottom, after word* "quit-rents," *add:—*

S. 25. Receipt for, and disposal of compensation, after award, or with consent, of Commissioners.

The Copyhold Act 1887 enacts as follows:

In every case where land is enfranchised under the award of the Commissioners, or by deed with the consent of the Commissioners, the lord for the time being, although his estate in the manor may be only a limited estate, shall be able to give a complete discharge for money payable to the lord for compensation, so as to relieve the person or persons paying the same from all responsibility for the application thereof, and in such cases the compensation money shall be paid by the recipient in such manner as the Commissioners, having regard to the provisions of the Copyholds Acts, shall direct.

By a subsequent section (s. 32), if the Commissioners are not, as therein specified, satisfied of the lord's title, and think the justice of the case requires it, and the compensation be a gross sum of money, they may direct payment of it into court.

S. 26. In case of enfranchisement by agreement where compensation under £500.

In cases of enfranchisement by agreement between the parties, or otherwise without reference to the Commissioners, where the compensation money does not exceed five hundred pounds, the lord for the time being shall be able to give such complete discharge, if he makes a declaration in writing stating the particulars of his estate or interest in the manor, and showing himself to be entitled to receive such money for his own use. If he is not actually so entitled he shall be deemed to have received such money as a trustee for the persons who are so entitled. If his declaration is false he shall be liable to the penalties attached to a false statutory declaration.

P. **585** (*f*), *add:—*

Powers of sale and exchange.

The same rule prevails in the case of a sale under the powers of the Settled Land Act 1882. *In re Llewellin*. 37 Ch. D. 317; 36 W. R. 347.

P. **627**, *in last line, after period insert :—*

Settled Estates Act.

Where a married lady contingently entitled to one-fifteenth of the property was living in Australia, and her consent could be obtained in time at an expense which would consume a large part of her share, Stirling, J., dispensed with her concurrence, allowing the petitioners to take their order notwithstanding that the concurrence of the lady in question had not been obtained. *Re John Turffrey*, 32 Sol. J. 25.

P. **629** (*e*).

Re Fowle's Settled Estates, 32 Sol. J. 44; W. N. 1887, 208.

P. **643** (*e*), *add :—*

Re Fowle's Settled Estates, 32 Sol. J. 44; W. N. 1887, 208.

P. **661**, *line* **22.**

Settled Land Act.

Where land is devised to trustees to divide the rents and profits between two persons during their lives, the undivided moiety in which one of those persons is interested is not, "in relation to the settlement," "settled land." *In re Collinge's Settled Estates*, 36 Ch. D. 516.

P. **662**, *line* **21.**

"So entitled" means "having life interests." North, J., in *In re Collinge's Settled Estates*, 36 Ch. D. 516, 518.

P. **663**, *after last line add :—*

Or with the concurrence of a person whose concurrence cannot be obtained; but if in the latter case a sale is desirable, it is expedient to appoint those trustees to be trustees for the purposes of the Act. *In re Johnstone's Settlement*, 17 L. R. I. 172.

P. **685**, *lines* **3** *and* **4.**

Where the settlement creates concurrent life estates in undivided shares, Mr. Justice North has held that the tenant for life of one of those shares is not a tenant for life of settled land consisting of that share, and empowered by this Act to sell that share, but is only empowered by this section to concur with the owner or owners of the other undivided share or shares in selling the whole. The learned judge accounted for the pro-

visions of the Act in this respect thus: The Legislature thought the concurrence of the owners of both necessary, and there were obvious reasons why it might be undesirable in the interest of those entitled in remainder, whom the Legislature had taken care to protect, that a tenant for life should have the power to sell one undivided moiety apart from the rest of the land. *In re Collinge's Settled Estates*, 36 Ch. D. 516, 519. With reference to the policy as distinguished from the interpretation of the Act there seems to be much force in the objection raised by counsel that the tenant for life of an undivided share is placed by it at a disadvantage as compared with the owner or owners of the other share or shares, inasmuch as the latter, if absolutely entitled, can dispose as they please of their unsettled share or shares. The danger which Mr. Justice North suggests that the Legislature may be supposed to have intended to guard against by withholding from the tenant for life of an undivided share the powers given to the tenant for life of the entirety might, one would suppose, have been deemed to be sufficiently guarded against by s. 53, making those powers fiduciary.

P. **689**, *after line* **21** *insert:—*

An Act to amend the Settled Land Act 1882, passed on the 23rd August, 1887, is as follows:—

Stat. 50 & 51 Vict., c. 30.

Whereas by the twenty-first section of the Settled Land Act 1882 (in this Act referred to as the Act of 1882), it is provided that capital money arising under that Act may be applied in payment for any improvement by that Act authorised:

Be it therefore enacted as follows:

Amendment of s. 21 of the Settled Land Act, 1882.

(1) Where any improvement of a kind authorised by the Act of 1882 has been or may be made either before or after the passing of this Act, and a rentcharge, whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money expended in redeeming such rentcharge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorised by the Act of 1882.

Section 28 of Settled Land Act 1882 to apply to improvements

(2) Any improvement in payment for which capital money is applied or deemed to be applied under the provisions of the preceding section shall be deemed to be an improvement within the meaning

of s. 28 of the Act of 1882, and the provisions of such last-mentioned section shall, so far as applicable, be deemed to apply to such improvement. within preceding section.

(3) This Act shall be construed as one with the Settled Land Act, 1882, and the Settled Land Act, 1884, and may be cited together with those Acts as the Settled Land Acts, 1882 to 1887, and separately as the Settled Land Acts (Amendment) Act, 1887. Short title.

Upon the meaning of this statute the following decision has already been made. In 1879 £2704 had been borrowed for the purpose of improvements of a settled estate which would since 1882 have been improvements within the meaning of the Settled Land Act 1882. The Enclosure Commissioners had charged the estate with the repayment of the loan by equal half-yearly instalments so calculated as to pay off the debt within twenty-five years, the earlier instalments being constituted more largely of interest and the later ones of capital. Upon an application by the tenant for life, who had hitherto paid the whole of the instalments, that thereafter the parts of them which represented capital might be paid out of capital money in the hands of the trustees, Kay, J., made the order asked for. It was admitted by the applicant, and stated by the judge, that the tenant for life must keep down the interest. *In re Lord Sudeley's Settled Estates*, 37 Ch. D. 123; 36 W. R. 162.

P. **690**, *at end of s.* **21** (x), Settled Land Acts.

Refer to *In re Llewellin*, 37 Ch. D. 317; 36 W. R. 347.

P. **691** (*a*), *add:—*

In re Rudd, W. N. 1887, 251.

P. **691.**

Upon the enfranchisement of copyholds where the manor is in settlement, the compensation to the lord may now frequently be paid to him although he may have only a particular estate. 50 & 51 Vict., c. 73 (Copyholds Act 1887), ss. 25, 26, above, p. 260, and see Treatise, 569.

P. **692**, *in line* **17**, *after reference letter* (*f*) *add:—*

He may require capital money to be applied in payment for improvements, although the trustees have power to pay for them out of rents and profits. The fact that he will derive a

benefit from that application of the money is not enough to prevent him from exercising the discretion required of him by s. 53. *In re Lord Stamford's Estate*, 56 L. T. 484.

P. **698**, *after line* **13** *add*:—

Where a scheme for improvements had been sanctioned, some excess in the cost of carrying it into effect over the estimated cost was by the Court of Appeal, reversing the decision below, allowed to be paid out of capital money. *In re Bulwer Lytton's Will*, W. N. 1888, 6; 32 Sol. J. 204.

P. **698.**

With reference to s. 28 of the Settled Land Act 1882 see the Amending Act of 1887, s. 2, printed above, under p. 689.

P. **704**, *note* (*k*), *add*:—

Cf. *In re Davis, Muckalt* v. *Davis*, 57 L. T., N. S. 755.

P. **707**, *after line* **3** *add*:—

Where estates in England and Ireland had been devised upon the same limitations, and all the beneficiaries lived in England, and the High Court in England had appointed residents in England to be trustees of the English estates for the purposes of the Settled Land Act 1882, the Master of the Rolls in Ireland appointed the same persons to be trustees of the Irish estates for the same purposes. *In re Maberley's Settled Estate*, 19 L. R. I. 341.

P. **711.**

In consequence of 47 & 48 Vict., c. 18, s. 5, trustees appointed after a contract for sale has been entered into by a tenant for life can waive notice, and as between him and his purchaser the objection that there are no trustees is, it is said, one of conveyance, not of title. *Hatten* v. *Russell*, 36 W. R. 317; W. N. 1888, 8.

P. **716** (*e*), *add*:—

In re Llewellin, 37 Ch. D. 317; 36 W. R. 347.

P. **717**, *line* **10**, *add*:—

In re Llewellin, *u.s.*

P. **721** (*c*), *add:*—

But see *In re Haynes*, 37 Ch. D. 306; 36 W. R. 321.

P. **724**, *after line* **13** *add:*—

The mere circumstance that the proposed exercise of the statutory power will be beneficial to the tenant for life exercising it does not prevent him from exercising the discretion required of him by this section. *In re Lord Stamford's Estate*, 56 L. T. 484.

P. **725**, *line* **16**.

Refer to *In re Llewellin*, 37 Ch. D. 317; 36 W. R. 347.

P. **750.**

Wife's separate property.

Upon the hearing of the Married Women's Property Act 1882, ss. 5, 19, on covenants for the settlements of after-acquired property, the case of *In re Queade's Trusts*, 33 W. R. 816, should have been stated, as now should the cases of *In re Whitaker*, 34 Ch. D. 227, and *Hancock* v. *Hancock*, 36 W. R. 166; 57 L. J. Ch. 65, which have been reported since the passage in the Treatise was in print. In the case of *In re Whitaker* the Court of Appeal, affirming Bacon, V.C., approved and followed Sir J. Pearson's decision *In re Stonor's Trusts*, 24 Ch. D. 195. In each of those cases a wife had, while sole and before the Act, covenanted for the settlement of property to which she might afterwards become entitled, except property which might be settled to her separate use, and in each case after the commencement of the Act the wife had become entitled to property which was not settled to her separate use, unless the Married Women's Property Act 1882, s. 5, was to be held to have so settled it. That effect the section was prevented by s. 19 from having. Section 19 hinders s. 5 from bringing property not otherwise settled to the separate use of a married woman within such an exception as that in the two cases just referred to, and from giving to the married woman, by the words "to dispose of," power to deal with the property notwithstanding the covenant.

In the cases of *In re Queade's Trusts* and *Hancock* v. *Hancock* the valid covenants were those of the husband only; and in the former, which was heard after *In re Stonor's Trusts* and before *In re Whitaker*, Mr. Justice Chitty held that notwithstanding s. 19 the property was not bound. The husband's covenant took

effect only with respect to the interest he took in the property, and in consequence of s. 5 he took none. The learned judge pointed out that s. 19 related to subsequent as well as past settlements, and suggested that to hold in such a case as that before him that the property was bound by the covenant would involve the proposition that a husband might, by a settlement to which the wife was not a party, deprive her of the benefit of s. 5. *In re Whitaker* Lord Justice Cotton said it was unnecessary to consider *In re Queade's Trusts*, because that particular question did not arise in the case then before the Court; but upon the question in *In re Queade's Trusts* again arising in *Hancock* v. *Hancock*, Mr. Justice North thought that, having regard to the reasons given by the Lords Justices *In re Whitaker*, the circumstance that the covenant is that of the husband alone does not make the difference that Mr. Justice Chitty thought it did. Accordingly, Mr. Justice North held that property acquired by a wife after the commencement of the Married Women's Property Act 1882 was bound by her husband's covenant, entered into before the Act, to settle any personal estate which should be given, devised or bequeathed to or descend or devolve on her.

With reference to Mr. Justice Chitty's apprehension that the interpretation of the statute he rejected would enable a husband to deprive his wife of the benefit of s. 5, by means of a covenant that any personal property which should come to his wife, and which had it not been for the Act would have been his by his marital right, should be settled, it may be observed that there seems to be a wide difference between holding that s. 19 prevents s. 5 from discharging property from the effect of a previous covenant by which but for the Act it would have been bound, and holding that s. 19 prevents s. 5 from making it impossible after the commencement of the Act to enter into such a binding covenant. Must not the "agreement for a settlement" referred to in s. 19 mean a valid agreement? Before the Act a husband's covenant bound that which he would take by marital right. As after the Act he could not acquire by marital right, he could not effectively agree to settle any such acquisition.

P. **750,** *at end of Section I. add:—*

The first clause of s. 19 of the Married Women's Property

Act 1882 applies, it seems, only to settlements made after the commencement of the Act. *Beckett* v. *Tasker*, 19 Q. B. D. 7; 36 W. R. 158.

P. **770** (*l*), *add*:—

See *Pape* v. *Pape*, 20 Q. B. D. 76; 36 W. R. 125.

P. **786.**

In re Tuff, Ex-parte Nottingham, cited in Additions, p. civ, to this page, is also reported 19 Q. B. D. 88; 56 L. T., N. S. 573.

P. **795** (*d*), *add*:—

Beckett v. *Tasker*, 19 Q. B. D. 7; 36 W. R. 158.

P. **806**, *after line* **3** *from bottom add*:—

Now, however, it has been decided that since the Married Women's Property Act a general probate of a married woman's will may be granted. *In re Amelia Price*, 12 P. D. 137.

P. **809**, *at end of section add*:—

Accordingly it has been held that the Married Women's Property Act 1882 does not enable a wife, in exercise of the power contained in 43 Geo. III. c. 108, by will executed three months before death to give land not exceeding five acres, etc., for erecting a church, that power being accompanied by a proviso that the Act shall not extend to "women covert without their husbands." *In re Smith's Estate, Clements* v. *Ward*, 35 Ch. D. 589.

P. **813**, *after line* **8** *add*:—

Moreover, in order that a wife's contract may be obligatory, she must have separate property at its date. *In re Shakespear*, 30 Ch. D. 169; 33 W. R. 744; *Palliser* v. *Gurney*, 19 Q. B. D. 519; 35 W. R. 760. Cf. *Jacob* v. *Isaac*, 33 W. R. 845.

P. **814** (*l*), *add*:—

The separate estate of a wife may be made liable for payment of her husband's costs in an action for dissolution of marriage in consequence of her adultery. *Millward* v. *Millward*, 57 L. T., N. S. 569; *Field* v. *Field*, 13 P. D. 23.

P. **820**, *after line* **11** *from bottom add:—*

It must be recollected that this enactment applies only to the contracts of wives who have, when they contract, separate property. *In re Shakespear* and *Palliser* v. *Gurney*, above, addition to p. 813.

P. **822** (*a*), *add:—*

Palliser v. *Gurney*, 19 Q. B. D. 519; 35 W. R. 760.

P. **835** (*d*).

Cf. *In re Hutchings*, W. N. 1887, 217; *Re Tippett's and Newbold's Contract*, 32 Sol. J. 184.

P. **839**, *addition in Vol. I., p. cv:—*

In re Dixon, also reported 35 W. R. 742.

P. **840.**

The restraint has been removed in order to enable the married woman to effectually consent to a sale of the subject-matter by her trustees. *In re Tippett's and Newbold's Contract*, 32 Sol. J. 184.

P. **841**, *after reference letter* (*b*) *in line* **7** *add:—*

Where a wife with a large separate inalienable income had given acceptances to her husband's creditors, part of the income was freed from the restraint. *In re C.'s Settlement*, 56 L. T. 299.

P. **841**, *after paragraph ending with line* **13** *add:—*

A restraint on anticipation of a wife's life interest in land in Ireland was removed in order to save her from being harassed by proceedings for the recovery of certain debts, and to prevent eviction from the land for head rent. *In re Segrave's Trust*, 17 L. R. I. 373.

P. **841**, *before line* **16** *from bottom insert:—*

An order was made by the Court of Appeal without requiring service of the summons on the trustees. *In re Little's Will*, 36 Ch. D. 701.

P. **847** (*m*).

Tetley v. *Griffith*, 36 W. R. 96; 57 L. T., N. S. 673.

P. **849**, *after line* **9** *add:—*

A married woman cannot be committed to prison upon a summons under the Debtors Act 1869 founded on a judgment for debt contracted by her during coverture. *Scott* v. *Morley*, 20 Q. B. D. 120; 57 L. J., Q. B. D. 43; 36 W. R. 67; *Morgan* v. *Eyre*, 20 L. R. I. 541. In *Scott* v. *Morley* the Court stated that a judgment against a married woman under s. 1 (2) of the Act of 1882 ought to be in the following form:—

"It is adjudged that the plaintiff do recover £ and costs (to be taxed) against the defendant (the married woman), such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise. And it is ordered that execution hereon be limited to the separate property of the defendant (the married woman) not subject to any restriction against anticipation, unless, by reason of s. 19 of the Married Women's Property Act 1882, the property shall be liable to execution, notwithstanding such restriction" (*a*).

P. **851** (*g*), *add:—*

Otway v. *Otway*, W. N. 1887, 236.

P. **854**, *at end of line* **7** *insert:—*

And it has been held (*In re Gardiner, Ex-parte Coulson*, 20 Q. B. D. 249; 36 W. R. 142) that it does not apply in fact.

P. **855**, *before line* **2** *from bottom insert:—*

The power of suing and being sued given by the Married Women's Property Act 1882, s. 1, subs. 2, to married women does not abrogate the old practice of the Court of Chancery under which a married woman was incapable of being next friend or guardian *ad litem* for an infant. *Thynne* v. *St. Maur*, 35 W. R. 273.

P. **865**, *after first paragraph of Section II. add:—*

Where in Ireland a tenant for life had demised for his life, his lessee upon the death of the lessor was held not to be, by virtue of the Land Act 1881, in possession as tenant from year to year. *Massy* v. *Norse*, 20 L. R. I. 57. Incidents of particular estates.

(*a*) 20 Q. B. D. 132.

P. **865**, *after line* **14** *from bottom add:—*

Moreover, to the tenant of a manor for a particular estate powers of enfranchising copyholds are given by the Copyhold Acts (Treatise, Ch. IX. s. 26), and Copyholds Act 1887, ss. 25, 26, 32, 39, 40, above, pp. 259, 260.

P. **866** (*d*), *add:—*

Re Hollingshead, W. N. 1888, p. 18.

Right of tenant for life to profits.

P. **873**, *after line* **17** *add:—*

Where a company had, under s. 85, paid into court a deposit in respect of the interest of a tenant for life who had subsequently concurred in a conveyance of the fee to the company, and the company omitted for many years to obtain payment out of the deposit, they were permitted to do so without service of the petition on the landowner. *Ex-parte Lancashire and Yorkshire Railway Co.*, 55 L. T. 58.

Pp. **873**, **874**.

The decision of the Court of Appeal in the case of *In re Bouch* was reversed in the House of Lords (*Bouch* v. *Sproule*, 12 App. Ca. 385; 36 W. R. 193), where the judgment of Mr Justice Kay, that the bonus was capital, was restored. The reversal, however, of the decision of the Court of Appeal was not founded on a difference from that court upon the general doctrine that the rights of the tenant for life and remainderman in bonuses declared on settled stock or shares are "dependent on the legitimate action of the company" (Treatise, p. 874), but on a difference from the Court of Appeal upon the question how the action of the company in the case before the House ought to be interpreted. The company, in that case, having accumulated during a period of several years a large sum of undivided profits, resolved to divide that sum among their shareholders and to raise an equivalent amount of new capital to be paid up concurrently with the bonus dividend. The arrangements were such that the existing shareholders could accept new stock in satisfaction of their shares of bonus dividend, and the value of the company's property was such that the new stock would be immediately saleable for more than its nominal value. The Court of Appeal thought that the directors did not by their acts make the payment of the

dividend contingent on the acceptance of the new shares (*ib.* 659), and that the effect of the proceedings of the company was not to convert the bonus into capital, except where, by the will and action of the individual shareholder, new shares were accepted and his bonus set off against the call (*ib.* 660). From this interpretation of the facts that of the House of Lords differed. "We must," said Lord Herschell, "look both at the substance and form of the transaction. . . . It was obviously contemplated, and was, I think, certain that no money would, in fact, pass from the company to the shareholders, but that the entire sum would remain in their hands as paid-up capital" (12 App. Ca. 398). Lord Watson said that the company did not give any option to the shareholders to choose the bonus and reject the shares (*ib.* 404).

In commenting upon the decisions *Brandon* v. *Brandon*, *Irving* v. *Houston*, and those following them which related to stocks of the Banks of England and Scotland, Lord Herschell observed that the Bank of England could not have declared that the sums then in question should be added to or form part of its capital property so called, for the Bank had no power to increase its capital except by obtaining an Act of Parliament (*ib.* 393). This seems inconsistent with the proposition cited (Treatise, 874) from the judgment of the Court of Appeal (29 Ch. D. 656), "that profits remaining undivided from year to year do, according to the constitution of the Banks of England and Scotland, pass into and become part of the capital of the company." The discrepancy, however, is probably verbal only. Lord Herschell, in *Bouch* v. *Sproule*, cited Lord Justice Fry as accurately stating, as the foundation of the judgment in *Irving* v. *Houston*, that the accumulated profits had become part of the floating capital of the Bank not by reason of any declaration of the company that they should be so, but only in the sense that, having accumulated, they were, *de facto*, used as part of its capital (12 App. Ca. 393). The Bank cases, it seems, differed from those in which the companies could formally capitalise profits, in that in the Bank cases definite action by the companies was not needed to infer capitalisation.

P. **880** (*g*), *add* :—

Ward v. *Countess of Dudley*, 57 L. T., N. S. 20.

Wasting and future interests.

P. **887**, *after line* **12** *add :—*

In a case where a railway company paid compensation for coals which, upon notice being given by the tenant of the land that he proposed to work them, the company required to have left for the support of their line, and where the lessor of the land was a tenant for life without impeachment of waste, Kay, J., determined, under the power given him by s. 74, that as the coal for which compensation was recovered was not of such an extent that it could not be gotten during the life of the tenant for life, the whole compensation belonged to her. *In re Barrington*, 33 Ch. D. 523, 528 ; 35 W. R. 164.

Waste.

P. **897**, *in line* **8**, *after reference letter* (*b*) *add :—*

Hence, where a neighbouring mine owner by mistake trespassed and wrongfully took coal from the land of such a tenant, that tenant was entitled to compensation paid by the wrong doer. *In re Barrington*, 33 Ch. D. 523 ; 35 W. R. 164.

P. **908** (*a*), *add :—*

With reference to the liability of an executor, apart from this statute, for waste committed by his testator, see *Phillips* v. *Homfray*, 24 Ch. D. 439; observations in *Batthyany* v. *Walford*, 36 Ch. D. 269, 279—281.

P **911** (*g*).

See *Batthyany* v. *Walford*, above.

P. **913** (*d*).

Batthyany v. *Walford*, affirmed 36 Ch. D. 269.

P. **914** (*a*), *add :—*

Gilliland v. *Crawford*, I. R. 4, Eq. 35.

Repairs and improvements.

P. **915**, *after line* **14** *from bottom add :—*

In a case in Ireland, executors having applied personalty in improvement of settled land, it was held that the expenditure was unauthorised, but that, it having been made at the request of the tenants for life, they must repay the executors. It was also held that, the expenditure being necessary to complete

houses begun by the testator, and so to preserve and make productive the product of his expenditure, it fell within the rule of equity that where a tenant for life expends money in the preservation of property, which otherwise would be lost, he is entitled to a lien for his expenditure on the property preserved. By consent the repayment of the money was spread over fifty years. *Ferguson* v. *Ferguson*, 17 L. R. I. 552.

P. **916** (*a*).

In cases in Ireland the decision in *Hibbert* v. *Cooke* has been distinguished on the ground of the house there being the principal mansion-house, and the reason of the decision so far inapplicable to expenditure in building other houses. *Gilliland* v. *Crawford*, I. R. 4, Eq. 35; *Ferguson* v. *Ferguson*, 17 L. R. I. 552.

P. **916** (*g*).

Batthyany v. *Walford*, affirmed 36 Ch. D. 269.

P. **949** (*f*), *add*:—

Forfeiture on bankruptcy.

Restraints on alienation held void in *Martin* v. *Martin*, 19 L. R. I. 72.

P. **954**, *after first paragraph add*:—

Judgment in action for debt, and execution under which goods of the debtor were seized, were held not to make operative a trust to take effect in case the debtor should commit or knowingly permit or suffer to be committed any act whereby his interest in settled land might become the property of a third party. *In re Ryan*, 19 L. R. I. 24.

P. **956**, *after paragraph ending with line* **12** *add*:—

When in Ireland a man suffered judgment to be entered up against him and registered, he was held to have done or suffered something whereby the rents and profits of land payable to him would by operation of law or otherwise become vested in or payable to some other person or persons. *In re Moore's Estate*, 17 L. R. I. 549.

P. **961** (*c*), *add*:—

Acc. Re Francis Broughton, 57 L. T., N. S. 8.

P. **962**, *after line* **20** *insert:—*

A tenant for life who at the beginning of his interest in possession was a felon sentenced to ten years' penal servitude, having afterwards obtained a ticket of leave, was held to be entitled by 33 & 34 Vict. c. 23, s. 36, to sue for the administration of the estate in which his life interest was given, and not by his own act or by operation of law to be deprived of the absolute personal enjoyment of the same interest or any part thereof. *In re Dash*, 57 L. T., N. S. 219.

P. **965** (*b*), *add:—*

The Queen v. *Judge of the County Court of Lincolnshire*, 20 Q. B. D. 167.

Interests during minorities.

P. **1014** (*l*), *add:—*

But see *In re Townsend's Estate*, 34 Ch. D. 357.

Accumulation.

P. **1038**, *between lines* 5 *and* 4 *from bottom insert:—*

In a recent case a strict settlement of land, which was mortgaged, contained a term of years to begin at the death of the settlor, who was the first tenant for life. The termors were directed to raise out of the rents, during twenty-one years from the settlor's death, an annual sum of £1,000, and to accumulate it by way of compound interest. At the expiration of that period, or from time to time during it, they were to apply the annual sum and accumulations towards discharge of "such mortgages as are now or shall then be charged upon the estate or any part of the same," and after paying expenses and certain costs of management, to permit the persons for the time being entitled to the immediate reversion to receive the surplus rents and profits. The settlor and certain other tenants for life under the settlement having died, the trustees of the term having accumulated £8,665, and a tenant in tail in possession having attained twenty-one and disentailed the estates, that tenant applied to the Court, asking for the discontinuance of the accumulation and a transfer to himself of the accumulated fund; but, Mr. Justice North having directed that in future the £1,000 a year should be yearly offered to the mortgagees successively, and if declined by all paid to the tenant in possession who had acquired the fee, the Court of Appeal directed that if so declined the sums should be invested and accumulated

North, J., and the Court of Appeal held the mortgagees as well as the tenant for life and remaindermen to be objects of the settlor's bounty, and that the accumulation must be continued. *In re Fitzgerald's Settlement*, 37 Ch. D. 18.

P. **1068**, *before line* 11 *from bottom insert :—*

Succession duty.

Where upon a marriage property is settled by some other person than either of the spouses, the interest which either of them surviving the other may take on the death of that other is a succession derived from the settlor, and consequently chargeable with duty. *Att.-Gen.* v. *Maule*, 56 L. T. 611. The interest would not, it is conceived, be chargeable if the property settled were first given by the donor to the intended husband or wife and then settled by him or her, always recollecting that the substance of the transaction, not mere technicalities, determines the question. *Ib.* 613.

P. **1079**, *before line* **6** *from bottom insert :—*

A residuary bequest has been held to exercise a testamentary general power, although the testator had before the date of his will purported to exercise the power by an instrument executed and attested as a will which was referred to in a codicil to the will, but was not itself admitted to probate. *In re Gibbs' Settlement*, 37 Ch. D. 143 ; 58 L. T., N. S. 11.

P. **1080**, *at end of Section II. insert :—*

Stat. 44 & 45 Vict. c. 41, s. 53.

Among the enactments of the Law of Property and Conveyancing Act, 1881, are these :—

Construction of supplemental or annexed deed.

(1) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2) This section applies to deeds executed either before or after the commencement of this Act.

The practice of making appointments and other instruments which are dependent on prior instruments by what are called supplemental deeds, has sprung up since 1881, and has been suggested, I suppose, by this section. Yet that section has not altered the law, and a deed framed in the manner it describes would have operated before the commencement of the

Act in the manner the section states that such a deed shall operate after its commencement. The section does not constitute a new proposition of law, but so august a declaration of indisputable truth seems to be and appears to have been received as a recommendation by the Legislature of a particular method of drawing deeds.

Trying the value of that recommendation first by the practice founded on it, I have noticed that every supplemental deed I have yet seen has not stated barely that it was supplemental to another deed, but has stated also some of the contents, or what the draftsman deemed the effect of some of the contents, of that deed. The reference to the former deed has been only a recital in a new, but not, I think, a better form.

It may, however, be said that the framers of those deeds failed to grasp the meaning of the recommendation and to use it aright. The course recommended was probably that of referring to the former deed by a mere statement of its date and parties, or of those and such other particulars as suffice to identify it, but no more. That would accord with the practice in framing indorsed deeds, the model the draftsman of the section had in view. As, however, it is difficult to see the reason for informing us by Act of Parliament that instruments so framed will have the operation which they must have, so it is important that those who adopt the recommendation of the Act should not infer from the enactment that since 1881 a supplemental deed operates otherwise than it did operate or would have operated before 1882.

The value of the recommendation depends on the function of recitals, its purpose being obviously that of dispensing with them. Now, from the statement that a deed framed in the manner it describes shall operate as if indorsed on or containing a full recital of the deed to which it is stated to be supplemental, a student might infer that the operation of the second deed depended on its either being indorsed on or reciting the former deed; yet, except when the deed is a release, and possibly in some other rare cases, that is not the fact. As a rule, in a properly drawn deed the recitals do not affect its operation. However long or numerous they may be, it is possible,—after transposing from them to the operative part any definitions they may contain of terms used in that part, as, in the case of an assignment of a lease, by transposing the description of

the property from the recital of the lease to the operative part, —to strike those recitals out of the deed, and its operation in law will be precisely the same as if they remained.

Recitals have two functions: first, that of enabling the draftsman to frame aright the operative part of his deed; and secondly, that of enabling those who have to read and guide their conduct by that deed to understand its operation. The value of the first function can of course be appreciated rightly only by those who are accustomed to frame the drafts of deeds and other documents. The greater the experience of one so accustomed, the higher the value he will set upon explicit and lucid recitals as a guide to right action and a safeguard against error. Recitals show the circumstances in relation to which what is proposed to be done by the deed will operate. If those circumstances are not stated in writing, an accurate and complete knowledge of them must be acquired and retained by the draftsman, vividly informing his mind while he is framing the operative part of his deed. Extreme simplicity in the circumstances, or exceptional mental power in the draftsman, may enable him to draw his deed in right relation to those circumstances without stating them in the form of written recitals; but in most cases he cannot without writing them acquire the intellectual basis necessary to the execution of his subsequent work. The acquisition and retention in his mind of the knowledge of the circumstances is usually the most laborious part of his task, and he finds it greatly facilitated, to say the least, by committing what he learns to writing so soon as he has learnt it. The acquisition and retention for the necessary time of this knowledge is more or less difficult according to the greater or less complexity of the cases, and to the manner in which the draftsman's information is given him in a bundle of papers which he has before him at his work; but the difficulty to him is but a part, and often a small part, of the difficulty of the whole acquisition. The papers may contain information of events recorded in divers places, states of things existing in other places, and the contents of documents in the custody of divers people. Much time and labour may have been employed in collecting the information contained in the papers on the draftsman's table.

If the importance of the first function of recitals and the labour and time expended in acquiring the information they give be rightly appreciated, little further consideration will be

necessary to guard against any disposition to undervalue their second function. If they, or at least the knowledge they record, be necessary in order to enable a draftsman to prepare the operative part of his deed, they must be equally necessary to those who, after the deed is made, have to read and use it. It will operate whether they do or do not understand its operation, but to them the understanding of its operation is the point of chief importance. If they have a sufficient statement by recital of the circumstances in which the deed was made and in relation to which it was to operate, they can understand it at once; but if they have not such a statement they must resort to all those different sources of information to which those concerned in the preparation of the deed resorted, and repeat the cost in time and labour then incurred, probably incurring more in consequence of their own want of knowledge of those sources, or of some of those sources having in the interval ceased to exist, and possibly failing to gain all the knowledge they need.

It is obvious that to make a deed describe itself as supplemental to another is to perform only an infinitesimal part of the function of recitals. The statement, though in the form of an Act of Parliament, that a supplemental deed shall, as far as may be, be read and have effect "as if the deed so expressed were made by indorsement on the previous deed, or contained a full recital thereof," will not give to either the framer or the reader of a supplemental deed the information which each needs for his peculiar task, and could have obtained either from a within-written deed, had the supplemental deed been indorsed, or from a recital. That this is felt in practice, if not clearly understood, appears from the fact above noticed, that in "supplemental deeds" the deeds to which they are intended to be supplemental are seldom barely referred to, but are referred to together with some of their contents.

By stating that one deed is supplemental to another the need of a recital of the first deed, if that need exist, is not supplied. How recitals should be framed is another question. They should give all the information necessary to show accurately all the circumstances in relation to which the deed is to operate, and, ordinarily, no more. Sometimes what is needed may be more advantageously done by full citations of the language of prior documents. In other cases it may be better to state the net result of some prior transactions. The latter

course requires great care in the framer of the statement in order to guard against incompleteness and inaccuracy, and often cannot be safely adopted; while in other cases it may be accomplished with great gain in point both of conciseness and lucidity.

P. **1089** (*e*), *add:—* "Children"

In re Hall, 35 Ch. D. 551.

P. **1091** (*b*), *add:—*

Locke v. *Dunlop*, 36 W. R. 41.

P. **1094**, *after paragraph ending line* **6** *from bottom add:—*

A power to appoint to all or any of the donee's sons in such shares and charged with such sums as a provision for the other or others of such issue, male or female, as he should think proper, was held to authorise an appointment to daughters. *Dowglass* v. *Waddell*, 17 L. R. I. 384.

P. **1094** (*g*), *add:—*

See *In re Smith, Lord* v. *Hayward*, 35 Ch. D. 558.

P. **1117** (*b*), *add:—* Portions.

A trust in a marriage settlement after the death of the husband, in case there should be children, issue of the marriage, then living, for "all and every the children" at twenty-one or marriage, held to entitle children attaining twenty-one and dying before the husband. *Cobden* v. *Bagwell*, 19 L. R. I. 150.

P. **1139**, *at foot.* Advances to portionists.

As portions and other provisions for children of or out of funds the income of which is appropriated to the use of their parents during their lives are by the hypothesis unavailable in the ordinary course of administration for the service of the portionists or children until their parents die, it often happens that the portionists or children, upon entering on independent life or marrying, may need capital before they are entitled to receive their portions or other provisions under antecedent settlements. In anticipation of those needs the powers of

advancement already described are inserted in settlements. Frequently, in exercise of those powers, parts of the portions or of the other funds to which children may be entitled expectantly on their parents' deaths may, with the consent of those parents, be applied in the lifetime of the latter for the advancement in the world or benefit of the children. The cases, however, in which powers of advancement are resorted to, are for the most part, on the one hand, such as require only a part of the available capital, and that for the purpose of enabling the child advanced to become an earner of income,—apprenticeship fees and, formerly, the prices of commissions in the army being among the most common examples,—and, on the other, those in which the family wealth is so small that it affords no other fund from which these expenses can be defrayed. There is, however, another class of cases in which, on the one hand, a larger present advance of capital is needed—the marriage of a daughter calling for an immediately income-yielding fund being the chief example,—and on the other, the parent or some one *in loco parentis* has resources of his own, out of which he is able and willing to make the needed advance.

Questions raised by advances.

Upon such a gift as that last described—a present gift by way of advancement (*a*) made by a parent or one *in loco parentis* to a child expectantly entitled to a portion in the technical sense or to all or part of any settled fund—there may arise the questions, first, whether the advance is to be accounted in satisfaction or part satisfaction of the portion; second, whether the advance purchases for him who makes it the interest of the child in the settled fund; third, where other children are interested in the settled fund, whether the advance increases *pro tanto* their shares; or, fourth, where the whole fund is a charge on other property, whether so much of the original sum directed to be raised as will be equal to the sum advanced, will be extinguished in exoneration of the charged property for the benefit of the person entitled to that property (*b*).

Answer by expressed intent of parent making advance.

The parent making the advance may also, if at the time (2 H. & M. 332, 333) he express that to be his intent, or if that intent may be inferred from the circumstances (*ib.*), and the

(*a*) The cases referred to do not include those which turn on the presumption against an intent to give double portions, and the question whether a legacy is not intended to be in satisfaction of a portion, which are collected in the notes to *Ex-parte Pye*, in 2 Wh. & Tud. L. C. in Eq., 6th ed. 364, 389.

(*b*) Of these questions, the second, third, and fourth correspond with those stated by Mr. Sanders, 2 Uses, 4th ed., 265; see also 1 K. & J. 680—682.

child advanced be *sui juris*, make the advance operate—(1) in satisfaction of the claim of the advanced portionist; (2) in purchase of his share (*Gower* v. *Gower*, 1 Cox 53; *Noel* v. *Lord Walsingham*, 2 S. & St. 99, 111; 7 Ha. 330; 1 K. & J. 640); (3) in gift of that share to the other portionists (*Duke of Bridgewater* v. *Egerton*, 2 Ves. 121, 123); or (4), where the portions fund is a charge, in exoneration *pro tanto* of the property charged.

Answers in anticipation by settlement giving portions.

In prevision of the possible omission by the parent on making an advance to express his intent, conveyancers long ago and often inserted in settlements of land, containing trusts to raise portions, clauses declaring, more or less explicitly, how such advances, if made, should operate. Those clauses did not, like expressions by the advancing parent, depend for efficacy on the juridical competence of the child advanced.

Inference of intent to satisfy.

If there be no expression of intent, it is settled, 1st, that from the mere facts of a child being entitled to a portion and of its parent making another provision for it, an intent that the other provision is intended to be in satisfaction of the portion cannot be inferred (*Walpole* v. *Lord Conway*, Barnard., 153; *Roberts* v. *Dixall*, 2 Eq. Ca. Ab. 668; *Douglas* v. *Willes*, 7 Ha. 318, 328; *Samuel* v. *Ward*, 22 Beav. 347; *Noblett* v. *Litchfield*, 7 Ir. Ch. R. 575), though in some cases the circumstance that the portion is payable by or out of the property of the parent who makes the other provision may justify that inference (*Dawson* v. *Duke of Cleveland*, West t. Hardwicke, 106; *Pitt* v. *Jackson*, B. C. C. 51, s. c. nom. *Smith* v. *Lord Camelford*, 2 Ves. Jun. 698; *Plunkett* v. *Lewis*, 3 Ha. 316; *In re Lawes*, 20 Ch. D. 81). *Brownlow* v. *Meath*, 2 Ir. Eq. R. 383; 2 Dr. & Wal. 674, may probably be supported upon the principle of the above cases rather than upon the authority of *Folkes* v. *Western*, below, upon which Lord Plunkett relied. "Where a gift is to discharge a former debt," "something should move from the giver [qy. debtor?]" (Lord Hardwicke, C., 2 Eq. Ca. Ab. 669). "Satisfaction can only arise where the person who makes the payment is himself the party bound to pay, or is the owner of the estate charged with the payment" (Romilly, M.R., 22 Beav. 350). Cf. *Cooper* v. *Cooper*, L. R. 8 Ch. 819, and the other cases relating to the presumption against double portions above adverted to, though I am not aware that that doctrine has been applied to advances *inter vivos*.

Inference of intent to purchase.

In these cases the first question, that of satisfaction, and the second, that of purchase, coalesce; where satisfaction cannot, *a fortiori* purchase cannot be inferred; and where, because the parent making the advance or his estate was liable for the portion, a satisfaction of the portionists' claim must be inferred, that satisfaction obviously exonerates the parent: in other words, he thereby purchases his child's portion.

Inference of intent to benefit other portionists.

Nevertheless the two questions are distinct from each other: an advance, though not intended to purchase the portion, may be intended to satisfy it; and in a case where neither the parent who made the advance nor his estate was liable for the payment of the portion, and the portions fund was not one charged on and to be raised out of another property, it was decided that an advance by the parent of the portionist made expressly in satisfaction of her portion, but without any further expression of intent, enured to the benefit of the other portionists). The advanced portionist is supposed to be by the advance struck out of the number of portionists (*Lee* v. *Head*, 1 K. & J. 620, 640). The same result was held to follow where the interests of the portionists were variable by exercise of a power which might after the advance be exercised by another person than the parent who made the advance, although half of the portions fund was a charge on land. *Folkes* v. *Western*, 9 Ves. 456; *Ford* v. *Tynte*, 2 H. & M. 324; and cf. *Brownlow* v. *Meath*, 2 Ir. Eq. R. 383; 2 Dr. & Wal. 674, all commented on below.

Inference of intent to exonerate estate charged with portions.

Where, however, the advance is made in satisfaction of a portion charged on another property, the advance is, in the absence of any further expression of intent, presumed to be for the benefit of the owner of the charged property, and to operate in exoneration of it *pro tanto* (Sir W. Grant, M.R., 9 Ves. 460; Sir John Leach, M.R., 2 S. & St. 110, 2 Sug. Pow. 7th ed. 214); unless there be such a reason for holding that the advance enured to the benefit of the other portionists as existed or was thought to exist in *Folkes* v. *Western*, below. That Lords Thurlow and Eldon, as well as Sir W. Grant, so understood the law, appears from the observations of those Chancellors in *Rickman* v. *Morgan*, 1 B. C. C. 63; 2 *ib.* 394, and *Leake* v. *Leake*, 10 Ves. 477, 489, and Sir W. Grant's decree in *Onslow* v. *Michell*, 18 Ves. 490, 496; but see *Brownlow* v. *Meath*, 2 Ir. Eq. R. 383; 2 Dr. & Wal. 674, commented on below.

Observations on the rule dependent on *Folkes* v. *Western*.

If the rules I have ventured to propound are deducible from the cases, it is worthy of consideration whether that one is sound which depends on *Folkes* v. *Western*, and is to the effect that an advance in satisfaction of a portion, where the portions fund is a charge on other property and is distributable among a class of portionists in such shares as some one other than the advancing parent may think fit, operates for the benefit of the other portionists, instead of in exoneration of the estate. Sir W. Grant's reason for the rule was that the advanced portionist had nothing that she could make the subject of bargain with her father," . . . "the whole being discretionary, depending first upon the father and mother and then upon the survivor." "How can I say," he asked, "any definite proportion of this has sunk?"

Now, if this reason be examined and compared with the decision, it will appear that although the judgment denies the possibility of the child advanced making a bargain with her father, the decision gave effect to such a bargain,—that although the learned judge thought the inference of such a bargain impossible because of the existence of the power, the decision implied that the power had been already destroyed,—and that although Sir W. Grant relied on the incertitude of the amount of the advanced child's share, his decision ascertained that amount; for his theory was that the advanced child had ceased to be one of the objects of the power, and of the trusts to take effect in default of appointment. What was that, but to give to the other sister, who not taking by appointment at all, and taking under the original trust in default of appointment only half the fund, must have taken by virtue of the advance, and Sir W. Grant's judgment as to its operation, the other half? Thus, every one of the three constituents of Sir W. Grant's reason for his decree are implicitly denied by the decree itself, and no other reason is shown by the judgment for the exception made by it from the general rule that satisfaction of a portion charged on land exonerates the land.

Notwithstanding all the respect due to so great a judge, it is impossible to deny that if Sir W. Grant is correctly reported he erred in suggesting that a bargain could not be made. It was made expressly by the advanced child's marriage settlement, and as already stated effect was given to it by Sir W. Grant's decree; but admitting the bargain, there arose three of the questions with which the present inquiry is concerned.

Satisfaction was bargained for; but was the bargain that the satisfied portion should belong (1) to the father making the advance? (2) to the owner of the charged estate so far as the portions fund was a charge, and the advance was in respect of that part of the fund? or (3) to the other portionists? The Master of the Rolls decided the first and second of these questions in the negative, and the third in the affirmative. It is, as we shall see, the decision of the first of these questions for which *Folkes* v. *Western* has been relied on as authoritative. The decisions of the second and third ought, it is submitted, to have been reversed, the reasons given for not letting the satisfaction operate in ease of the charged estate having already been shown to be discredited by the decree.

There was indeed a difficulty in applying in *Folkes* v. *Western* the old rule, caused by the circumstance that the portions fund consisted half of a charge on land and half of an independent fund, and it would have been necessary to determine not only the amount of the satisfied share, but the proportions in which it must be regarded as being contributed by the two parts of the fund; and further, if the satisfaction of so much as was a charge were held to operate according to the old rule in exoneration of the land, how the satisfaction of so much as came out of the independent fund should operate. These questions, however, are not adverted to in the report. There seems to be no insuperable difficulty in determining the first of them, and Sir W. P. Wood's decision in *Lee* v. *Head*, 1 K. & J. 620 (above, p. 282), determines the second.

Satisfaction of all the portionists.

Another question left in obscurity by both *Folkes* v. *Western* and *Lee* v. *Head* is, what would be the destination of a portions fund not charged on land where all the portionists had accepted advances in satisfaction of their portions, and purchases of them by the parent making the advances could not be inferred?

Sir W. Grant's judgment in *Folkes* v. *Western*, that the power was destroyed by the advance which satisfied the portion, Sir John Leach, M.R., thought erroneous, and that an appointment under it was necessary to entitle the other portionist to more than the half which she was entitled to in default of appointment. In Sir J. Leach's view of the case in *Folkes* v. *Western* the child to whom the advance was not made should have taken, in the events which happened, one moiety

only of the fund, and the other moiety should have sunk for the benefit of the estate charged (2 S. & St. 111, 112).

Moreover, the destruction of the power by ascertaining the amount of the portion of the unadvanced child removed the ground of Sir W. Grant's judgment—the impossibility of saying what was the share of the advanced child.

Criticisms of *Folkes* v. *Western*.

A careful examination of *Folkes* v. *Western* is necessary, because, while the case has been much and variously criticised, it has yet been repeatedly recognised in general terms as authoritative. Several of the criticisms have themselves been criticised, and what the proposition of law is for which the case is regarded as authoritative is not obvious. Lord St. Leonards thought (2 Pow. 7th ed. 210) the decree in direct opposition to *Pitt* v. *Jackson* (2 Br. C. C. 51, s. c. on rehearing nom. *Smith* v. *Lord Camelford*, 2 Ves. Jun. 698); but in that opinion, notwithstanding Note I. to Sug. Pow. 8th ed. 631, Sir W. P. Wood, V.C., appears to have succeeded in showing that Lord St. Leonards was mistaken (1 K. & J. 631—633). Sir W. P. Wood himself argued that Sir W. Grant had in *Folkes* v. *Western* misapprehended the operation of the Custom of London, the analogy of which he purported to follow (*ib.* 636—639); but that argument was controverted by Sir J. Napier (7 Ir. Ch. R. 583). Probably, however, that point is not of much importance. Whether Sir W. Grant was right or wrong in his conception of the Custom, the authority of *Folkes* v. *Western* rests rather on his decree than on the analogy of the Custom, which he thought he followed, but was certainly not bound to follow. Sir J. Leach's criticism has been already stated, and is of chief importance.

Recognition of authority of *Folkes* v. *Western*.

The proposition for which the authority of *Folkes* v. *Western* has been repeatedly recognised appears to be merely this: that an advance by a parent to a portionist in satisfaction of his portion without a further expression of intent does not make the parent a purchaser of the portion. 2 S. & St. 111; 7 Ha. 330; 7 Ir. Ch. R. 583; 1 K. & J. 641 (*a*). For that proposition, indeed, the authority of *Folkes* v. *Western* is not needed, as it had been established long before that case was heard (above, p. 282).

The proposition for which *Folkes* v. *Western*, decided in 1804,

(*a*) Sir W. P. Wood's observations at p. 641 may, *primâ facie*, seem to bear another meaning, but if considered with reference to the case before him and the distinction he points out between portions funds which are and those which are not charges in other instruments, it will be seen that the above is the true meaning.

is the sole English authority is the proposition that in such circumstances as were before the Court in that case an advance in satisfaction of a portion charged on land enures to the benefit of the other portionists instead of in exoneration of the charged estate (2 Sand. "Uses," 4th ed. 26 note). Of the decision in this respect Sir J. Leach, M.R., in 1824, expressed his disapprobation in *Noel* v. *Lord Walsingham* (above, pp. 284, 285). In 18— Lord Plunket, L.C.I., in *Brownlow* v. *Earl of* (2 *Meath* Ir. Eq. R. 383; 2 Dr. & Wal. 674), approved of and followed Sir W. Grant's decision, but his judgment stated another circumstance as a sufficient reason for his decree, and in approving Sir W. Grant's decision added nothing to that learned judge's reasons for it. In 1864 Sir W. P. Wood, V.C., while deciding in *Ford* v. *Tynte* (2 H. & M. 324) that in that case a father who had made an advance to his child in satisfaction of her portion had purchased it for himself, said that in *Lee* v. *Head* (1 K. & J. 620) he had had occasion to consider the authorities, and that the principle involved in them was that where a father makes an advancement to a child under such circumstances as in *Ford* v. *Tynte* he must be presumed by the absence of evidence to the contrary to have done so for the benefit of the *other children*, and not for his own benefit (2 H. & M. 331). The words "other children" in this passage, which were not essential to the decision, are equivocal, and might comprise both the other portionists and the child entitled to the charged estate. Obviously the contrast in the learned judge's mind was that of the interest of the parent with those of his children rather than those of the children *inter se*; and if the judgment in *Lee* v. *Head* be referred to, it will, I think, be seen that Sir W. P. Wood there propounded the doctrine of a presumption that the parent means by an advance in satisfaction of a portion to swell the shares of the other portionists only with reference to cases in which the portions funds are not charged on other property. Sir J. Wigram's objection in 1849 to overruling *Folkes* v. *Western*, although that objection related to the authority of that case on a point for which its authority is not needed,—that forty-five years had elapsed since that case was decided, and that many titles might then depend upon it,—is equally applicable to the authority of the case for the point now under consideration, and with the enhanced force given to that objection by the lapse of nearly thirty years more. On the other hand, the force of that objection is lessened or countervailed by Sir J. Leach's

criticisms in *Noel* v. *Lord Walsingham*, and by the exposition of the law given by Sir W. P. Wood in *Lee* v. *Head*.

Consequence of advance with reference to power to appoint portions fund.

If, however, the decision in *Folkes* v. *Western*, grounded on the circumstances in that case, that the interests of the portionists were variable by a power, should ultimately be overruled, that would not dispose of the difficulty caused by the power itself. It had been treated of previously by Lord Rosslyn, C., in *Smith* v. *Lord Camelford* (2 Ves. Jun. 714), where the distribution of the property among the children was also variable by a power, but by one which, in the events which had happened, could be exercised, if at all, only by the parent who had made the advance to one of his two daughters, they in default of appointment being entitled to the whole equally. Lord Rosslyn, after holding that an appointment the father had purported to make to the unadvanced daughter was void, said, "Even a well executed appointment could not take from her [more than ?] one moiety, for though he could entitle himself to all Lady Camelford could claim, it would be only to that she could claim absolutely against the other daughters. He could not make an appointment in truth beneficial to himself" (2 Ves. Jun. 714). That a father, after he has advanced a child and thereby purchased that child's portion without having appointed and being still able to appoint what that portion shall be, should not be permitted to make that portion larger than it would be in default of appointment, because he has put himself into a position in which his own pecuniary interest subjects him to a temptation so to exercise his power as to increase the portion of the advanced child, instead of the disinterested position supposed when he was intrusted with the power of appointment, is a doctrine in accordance with other doctrines generally applicable to such powers, and one which might with advantage have been borne in mind upon the hearing of some other cases relating to such powers (Treatise 1496—1500). Sir W. Grant's reasoning is more difficult to follow. Pointing out the difficulty, which Lord Rosslyn seemed disposed to overcome, of inferring a bargain by the father for the purchase of his child's share when it could not be told what that share would be, he proceeded, as if that difficulty could continue until the time for raising portions should arrive, to make it a reason for giving the share to the other portionist, instead of to the owner of the estate, thereby destroying the power the existence of which occasioned the difficulty. Sir J. Leach, as

has been shown, thought that the power ought to have been held to continue capable of being exercised; and it is difficult to see why it should not so continue, subject to the restriction suggested by Lord Rosslyn. Lord St. Leonards, however, thought it an objection to even this construction, that an advancement by the father should at all circumscribe a power given to the mother if she should survive (2 Pow., 7th ed. 211, 8th ed. 831), considering that the mother could not, any more than the advancing parent, appoint a larger share than the aliquot part to which he or she might be entitled in default of appointment to the advanced child (*ib.* 832).

Expressions of intent by parent making advance.

With reference to expressions of intent by a parent making an advance, which expressions in order to be efficacious must be contemporaneous with the advance (2 H. & M. 332, 333), it was said by Sir W. P. Wood, V.C., that a statement by the parent that the advance is made "in lieu" of the portion does not show an intent by the parent to purchase the portion (1 K. & J. 629), but such an intent was inferred from a release as well as from an assignment of the portion to the parent (*Noel* v. *Lord Walsingham*, 2 S. & St. 99), though an assignment is the usual and more appropriate way of accomplishing the end. *Ib.*; *Gower* v. *Gower*, 1 Cox 53.

Declarations in settlements as to effect of advances to portionists.

Lord St. Leonards appears to have set little or no value on the declarations relating to the effect of advancement to portionists which are frequently contained in the settlements creating the charge for portions (above, p. 281). Such a clause, he wrote, really only expresses the rule of equity, and it is rather to regulate the rights of the child than to declare the effect of the advancement on the fund and the other children (2 Pow. 7th ed. 214). Lord St. Leonards, however, underrated both the actual and possible effect of such clauses. They either do determine or may be so framed as to determine beforehand all the four questions with the statement of which this discussion began. In their more ordinary forms, indeed, such as those in *Folkes* v. *Western* (*u. s.*), and *Noel* v. *Lord Walsingham* (*u. s.*), they expressly answer the first only of those questions; but their failure to do more appears to have arisen from the apprehension of lawyers, in former days at least, that if a portion charged on land were satisfied the satisfaction must operate in exoneration of the charged estate. Thus, with reference to a declaration in a settlement charging land with a sum for portions that advances by the parent should be deducted from

the portion unless he should by writing declare to the contrary, Lord Thurlow, C., although the clause does not appear to have contained any further expression of that intent, described it as inserted for the purpose of getting rid, if possible, of the burden on the estate; and finding, as he did, what he deemed to be an advance, he made it operate in relief of the owner of the charged estate. *Rickman* v. *Morgan*, 1 B. C. C. 63; 2 *Ib.* 394. So Lord Eldon, C., considered the intent of these provisions to be that advances, unless the parent making them makes a declaration to the contrary, shall be taken in ease of the estate (10 Ves. 489). Such also Sir W. Grant, subsequently to his decree in *Folkes* v. *Western* (*u. s.*), himself treated as the effect of a like clause. *Onslow* v. *Michell*, 18 Ves. 490, 496.

Clauses of the kind under consideration may be, however, and in some cases—perhaps in consequence of the shock to the old settled doctrine given by the decision in *Folkes* v. *Western* (*u. s.*)—they have been so framed as expressly to answer the other questions by declaring that the portion satisfied by the advance shall become the property of the parent making the advance (2 Sand. Uses, 4th ed. 265 note), or shall sink in exoneration of the estate, as in the will interpreted in *Cooper* v. *Cooper*, L. R. 8, Ch. 813.

Expediency of inserting such clauses.

Whether clauses of the description referred to should be inserted in settlements for the purpose of so determining in advance questions which may more properly be determined at the times when the advances are made, is another question upon which there may be difference of opinion. In one of the two principal precedents of real property settlements in the above collection I have not inserted any such clause (*a*), but in the second such a clause will be found.

Upon the import of such clauses some decisions are reported.

Interpretation of these clauses.

A settlement of a fund of personalty upon trust after the deaths of parents for their children equally contained a proviso that if the father should during his life advance or pay any sum or sums of money for the advancement or preferment in life of any child of the marriage, *or* in case any land, money or chattels should come by or from the father to or for the benefit of any child, such money and chattels and the value of such land should be accounted as part or in full of the portion thereinbefore provided for the same child, unless the father should by writing or his will declare the contrary. Sir J.

(*a*) Above, p. 48.

Wigram, V.C., held, first, that the first part of the clause applied to transactions *inter vivos* exclusively (see also *Cooper* v. *Cooper*, L. R. 8, Ch. 813), and the second exclusively to matters not perfected or not having effect till after the father's death; secondly, that the advances during the father's life contemplated by the clause did not include advances for maintenance or support, but only advances for advancement or preferment (see also *Cooper* v. *Cooper*, L. R. 8, Ch. 813, 820); thirdly, that gifts by the father in his lifetime of leasehold houses to his sons were not advances within the meaning of the clause; they were not "within the words of" it, nor were they benefits or provisions *ejusdem generis* (see also *Cooper* v. *Cooper*, L. R. 8, Ch. 813, 820); fourthly, that a gift of money to a daughter to enable her to apprentice her son might have been an advance within the clause if she had not, but could not be as she had previously, parted with her portion of the settled fund; and fifthly, that bequests by the father might be advances within the meaning of the second branch of the clause (*Douglas* v. *Willes*, 7 Ha. 318).

"Advance or pay in his lifetime."

A declaration in a settlement charging land with portions for younger children, that if the parent shall in his lifetime "advance or pay any sum or sums of money to or for the use or benefit of any younger child," for whom a portion is intended to be provided, then, unless the contrary shall be directed by the parent making the advance, the money so to be advanced shall be taken to be in full or in part satisfaction, as the case may be, of the portion to which the child would have been entitled under the settlement, does not refer to, and the effect intended to be produced by the declaration is not produced by a testamentary gift by that parent to one of the portionists (*Cooper* v. *Cooper*, L. R. 8, Ch. 813). Lord Selborne, C., showed, in his judgment in that case, how a proposition to the contrary —a proposition, in the words of Lord Eldon, "that a provision by will is to be considered as an advancement in the life of the party" (10 Ves. 489)—had gained a reputation for law to which it was not entitled, through that great judge having, with less than his customary caution, accepted as sound and repeated in his judgment a statement made by counsel (*ib.* 481), the proposition not being one on which they or Lord Eldon relied in support of what they maintained and he decided, but one which, assuming it to be correct, was an obstacle to their suit, and notwithstanding which, still assuming it to be an obstacle,

Lord Eldon granted their prayer (*Leake* v. *Leake*, 10 Ves. 477). Only a year before his above-cited observation that "a provision by will is to be considered as a provision in the life of the party," Lord Eldon had in another case supposed the law to be "that what is taken under a will is not an advancement in the life of the party" (*Twisden* v. *Twisden*, 9 Ves. 413, 426); and in that case his decision rested on that proposition. Hence, although Sir W. Grant, M.R., in *Onslow* v. *Michell*, 18 Ves. 490, 494, while he confessed that he had not been able to find any former case in which the question had been distinctly decided, treated Lord Eldon's doctrine in *Leake* v. *Leake* as authoritative, and Chief Baron Alexander decided *Goolding* v. *Haverfield*, 9 Price 593, and Sir L. Shadwell, V.C.E., decided *Fazakerley* v. *Gillibrand*, 6 Sim. 591, and *Papillon* v. *Papillon*, 11 Sim. 642, on the supposition that *Leake* v. *Leake* and *Onslow* v. *Michell* had completely and indisputably established the proposition that a provision by will is an advancement in the life of the testator (*ib.* 600, 601), that proposition now appears to depend on an extra-judicial remark of Lord Eldon only, and to be contrary to the weight of authority, including that of the last-named great judge himself.

It must, however, be recollected that it is less on any general principles than on the precise words of the clauses, that the question in every case depends; and that the clauses under consideration, as well as others, vary much from each other. In that before the Full Court of Appeal in *Cooper* v. *Cooper* (*u. s.*), the decision of the Court was facilitated by a requisition in the clause that an intent that the advance should not operate in satisfaction of the portion should be expressed by an instrument sealed and delivered in the presence of witnesses (L. R. 8, Ch. 824). The words "advance or pay" were also regarded as indicative of acts *inter vivos* (*ib.*). In *Onslow* v. *Michell* (*u. s.*), on the other hand, the contingency to which the declaration in the settlement related was that of a parent in his lifetime "*settling*, giving or advancing"; and Sir W. Grant there held that by a legacy the parent settled within the meaning of the clause. The Court in *Cooper* v. *Cooper* (*u. s.*) guarded itself from overruling *Onslow* v. *Michell*, and the distinction between that case and *Cooper* v. *Cooper* is clear. Nevertheless, considering how much Sir W. Grant relied on Lord Eldon's incautious remark in *Leake* v. *Leake*, and the

scope of the judgment of the Full Court in *Cooper* v. *Cooper* (*u. s.*), the decision in *Onslow* v. *Michell* cannot be relied on with unabated confidence.

"In his lifetime or at the time of his death."

The declaration in the old case of *Rickman* v. *Morgan* (1 B. C. C. 63, 2 *ib.* 394) referred to the contingency of an advance by the father "in his lifetime or at the time of his death"; and that in *Leake* v. *Leake* (7 Ha. 318) contemplated the event of a child having been preferred in the lifetime of the father, and of his having bestowed or given any portion with him or her upon his or her marriage, "or otherwise provided for" him or her.

Gift of land.

Again, although, as has appeared (above, p. 290), a gift of land may not be an advance or payment of money within the meaning of a clause of the kind under discussion (*Douglas* v. *Willes*, *u. s.*), yet it might within the meaning of such a clause if worded as that in *Leake* v. *Leake* (10 Ves. 477, 488).

Relinquishment by parent of his chance of succession.

The relinquishment by a parent to his other younger children of his chance of succession to the portion of one of them who was of unsound mind was held not to constitute an advancement or payment to them (*Cooper* v. *Cooper*, *u. s.*).

Perpetuities.

P. **1155** (*b*), *add* :—

Ferguson v. *Ferguson*, 17 L. R. I. 552.

P. **1155** (*d*), *add* :-

In re Bourne, 35 W. R. 359.

Estates to preserve contingent uses.

P. **1164** (*c*), *add* :—

Ferguson v. *Ferguson*, 17 L. R. I. 552.

P. **1165** (*b*), *add* :

In re Bourne, 35 W. R. 359.

Remainders to issue.

P. **1169** (*a*), (*c*), *add* :—

Ferguson v. *Ferguson*, 17 L. R. I. 552.

P. **1170** (*e*), *add* :—

Ferguson v. *Ferguson*, 17 L. R. I. 552.

Powers to appoint to issue.

P. **1210** (*b*), *add* :—

See also *Dowglass* v. *Waddell*, 17 L. R. I. 384.

P. **1215** (*l*), *add*:—

Williamson v. *Farwell*, now reported, 35 Ch. D. 128; 36 W. R. 37.

P. **1235** (*b*), *add*:— Trusts for issue.

Cobden v. *Bagwell*, 19 L. R. I. 150; see above, addition to p. 1117.

P. **1235**, *in note* (*a*), *after* "279" *in second line from bottom, add*:—

Where the trust for issue of a marriage was to take effect only in case there should be a child living at the death of the husband, Chatterton, V.C. (I.), held that as no child survived issue could not take. But see *In re Richardson's Trusts*, 17 L. R. I. 436.

P. **1237** (*c*), *add*:—

See also *In re Richardson's Trusts*, 17 L. R. I. 436.

P. **1254** (*k*), *add*:—

See *Blundell* v. *De Falbe*, W. N. 1888, p. 18.

P. **1258** (*a*), *add*:— Trusts in default of issue.

In re Watson's Trusts, 55 L. T. 316.

P. **1266** (*b*), *add*:— Shifting clauses.

In re Farrer and Champion, W. N. 1887, p. 202.

P. **1267** (*e*), *add*:—

In re Hartley, *Stedman* v. *Dunster*, 34 Ch. D. 742; 35 W. R. 624.

P. **1277**, *line* **8** *from bottom, after end of sentence, add*:—

The necessity for this was recently shown by a case in which discontinuance was not made a cause of forfeiture; and an injunction to take and bear a surname and arms was treated as complied with, although afterwards the use of the name and arms was discontinued. *In re Farrer and Champion*, W. N. 1887, p. 202.

P. **1309**, *after first paragraph add :—*

On the death of a trustee of copyholds they still descend to his customary heir. 50 & 51 Vict., c. 73, s. 45 ; above, p. **253.**

Estates *pur autre vie.*

P. **1311** (*k*), *add :—*

In re Carew, 19 L. R. I. 483.

Personalty settled as land.

P. **1336** (*a*), *add :—*

In re Whorwood, 34 Ch. D. 446 ; 35 W. R. 342.

P. **1343.**

With the paragraph relating to the words "so far as the rules of law and equity will permit" compare the doctrine that a covenant to retire from business "so far as the law allows" is too vague for the Court to enforce. *Davies* v. *Davies*, 36 Ch. D. 359.

P. **1359**, *after line* **7** *add :—*

Where, while Lord Cranworth's Act was in force, an Estate Act had enacted that s. 27 of his Act should apply to the trusteeship of the estate, provided that every new trustee should be appointed with the approbation of the Court of Chancery, and after Earl Cairns' Act had become law the trustees under the Estate Act, in exercise of the power given by Earl Cairns' Act, had, without the approbation of the Chancery Division, appointed new trustees, North, J., held the appointment valid. *In re Lloyd's Trusts*, 57 L. J. Ch. 246.

P. **1361**, *after line* **15** *from bottom add :—*

Where the lord of a manor or the tenant of a copyhold, being a trustee, is abroad, power has been given to the other trustees or trustee to compel enfranchisement. 50 & 51 Vict., c. 73, s. 40 ; above, p. 260.

P. **1362**, *after line* **13** *from bottom add :—*

With reference to the enfranchisement of copyholds where either lord or tenant is a trustee who refuses to act, see 50 & 51 Vict., c. 73, s. 40 ; above, p. 260.

P. **1363**, *after line* **6** *from bottom add :—*

With reference to enfranchisement of copyholds where either lord or tenant is a trustee and incapable, see 50 & 51 Vict., c. 73, s. 40 ; above, p. 260.

P. **1365** (*b*), *add :—*

Appointment of trustees.

In re Elizabeth Blake, W. N. 1887, 173.

If the person nominated become lunatic and be so found, the power may be exercised by the committee of the estate under an order of the judge in lunacy (16 & 17 Vict., c. 70, s. 137 ; *In re Eli th Blake*, *u. s.*)

P. **1367**, *after line* **18** *add :—*

Where a person nominated for the purpose of appointing new trustees has become and is found lunatic, the co-trustees of that person are, in Lord Justice Cotton's opinion, "continuing" trustees capable in that event of appointing a trustee in the place of the lunatic, though the Lord Justice thought it better that the committee of the estate should exercise the power. *In re Elizabeth Blake*, W. N. 1887, 173.

P. **1369** (*g*) :—

Cf. *In re Williams*, W. N. 1887, 143.

P. **1373**.

North, J., has held that the statute 45 & 46 Vict., c. 39, s. 5, is applicable only where an appointment of trustees of the whole property is being made ; and does not authorise trustees of a will, while purposing to continue trustees of the will generally, to appoint other persons to be trustees of one legacy. *Savile* v. *Cooper*, 36 Ch. D. 520 ; 35 W. R. 829 ; *In re Nesbitt's Trusts*, 19 L. R. I. 509 ; *Re Moss's Trusts*, 36 W. R. 316.

P. **1382**, *in line* **21**, *after "trustent" add :—*

Payment by new trustees of (1) costs of the former trustees demanded by the legal personal representative of the survivor of them upon transferring the property, and not shown to be improperly demanded ; (2) costs incurred by the new trustees previously to their appointment in obtaining a statement of the trust property and ascertaining that the power of ap-

pointing new trustees was being properly exercised; and (3) costs incurred with reference to the appointment of new trustees by the donee of the power, though disallowed by the taxing master, were allowed on review by Kay, J. *Harvey* v. *Olliver*, 57 L. T. N. S. 239.

P. **1383**, *in line* **7** *from bottom, after period add:—*

It has been held that the Court has no jurisdiction to make an order upon summons (*Re Gill*, 53 L. T. 611); yet on an originating summons asking for administration of an estate, and an appointment of new trustees, all parties interested being before the Court, it, in exercise of its general jurisdiction, ordered an appointment of new trustees. *Simes* v. *Simes*, 56 L. J. Ch. 779; 56 L. T. 611.

P. **1384**, *after line* **7** *from bottom add:—*

"Trust," however, does not mean "the duties incident to an estate conveyed by way of mortgage,"—a legislative affirmation of a distinction previously made judicially. *In re Goddard*, 1 My. & K. 25. For the earlier enactments and the decisions on them relating to this point, see *ib.*; *In re Stanley*, 5 Sim. 320; 7 *ib.* 170; *In re Dearden*, 3 My. & K. 508; *Ex-parte Payne*, 6 Sim. 645; *Prendergast* v. *Eyre*, Ll. & G. tempore Sug. 11; *Ex-parte Whitton*, 1 Ke. 278. Accordingly, under the Trustee Act 1850, the Court has not jurisdiction, upon the petition of a mortgagor and mortgagee, to vest in a purchaser a legal estate vested in a co-mortgagee out of the jurisdiction (*In re Osborn's Mortgage Trusts*, L. R. 12 Eq. 392); but it has, of course, where the mortgagee is shown to be a trustee who has neglected (Trustee Act 1852, s. 2) to convey. *In re Walker's Mortgage Trusts*, 3 Ch. D. 209; *In re Barber's Trusts*, W. N. 1888, 11.

P. **1387** (*g*).

In re Williams, W. N. 1887, 143. North, J., appointed a trustee of real estate instead of a sole trustee who had died before the testator whose will created the trust, and made a vesting order. It does not appear from the report in the *Weekly Notes* why the appointment could not have been made by the "personal representatives" of the deceased trustee: 44 & 45 Vict., c. 41, s. 31 (1) (*b*); *In re Shafto's Trusts*, 29 Ch. D.

247) and the estate conveyed by the personal representatives, devisee, or heir.

P. **1389** (*e*), *add :—*

Re Firth, Firth v. *Clarke*, 83 L. T. Newspaper 407.

P. **1390**, *at end of line* **18** *from bottom add :—*

The jurisdiction may be exercised although the bankrupt has obtained his discharge. *Re Foster's Trusts*, 55 L. T., N. S. 479.

P. **1393** (*a*), *add :—*

See *In Freeman's Settlement Trusts*, 37 Ch. D. 148; below, addition to p. 1422.

P. **1393** (*h*), *add :—*

See *Tempest* v. *Camoys*, W. N. 1888, 17.

P. **1396**, *after line* **5** *from bottom add :—*

Mr. Justice Chitty lately appointed two continuing trustees to be trustees in the place of themselves and a third who had become bankrupt, there being special circumstances making it impossible for the two trustees who were the largest creditors of the bankrupt trustee to obtain a new one in his place. *In re Mace*, W. N. 1887, 232; but see *ib.* 238.

P. **1399** (*c*), *add :—*

The infant should be served with the petition. *In re Adams' Trusts*, 35 W. R. 770; 57 L. T., N. S. 337.

P. **1399** (*f*), *add :*

See *Holmes' Trusts*, 57 L. T., N. S. 13, stated below for addition to Treatise, 1404.

P. **1403**, *line* **12** *from bottom, after reference letter* (*d*) *add :—*

Yet by a vesting order the person getting the estate or interest fails to obtain the covenant which he might be entitled to from the grantor. *Cowper* v. *Harmer*, 57 L. T., N. S. 714.

P. **1404**, *after line* **7** *add:—*

Where one of two trustees had been convicted of felony, and a new trustee had been appointed by the Court of the County Palatine, and the land within the jurisdiction of that Court and subject to the trust had been vested by order in the continuing and new trustee, Chitty, J., upon a petition to vest land without that jurisdiction in the continuing and new trustees, held that he had no jurisdiction to make the order asked for under Trustee Act 1852, s. 8 (Treatise, 1386); but it being shown that the convict could not be found, the judge made the order under Trustee Act 1850, s. 10. *Re Hulme's Trusts*, 57 L. T., N. S. 13.

P. **1405** (*c*), *add:—*

In re Bishop of Sarum is now reported in 55 L. T., N. S. 313, where it appears that although Chitty, J., being satisfied that in that case there was no danger of the estate having been dealt with since the death of the last surviving trustee in such a way that parties not before the Court could be prejudiced by an order vesting the property for the estate the deceased trustee would have had if alive, yet generally, except in cases where it is inconvenient or impossible to identify the heir, that learned judge appears to have disapproved of that form of order. A few days previously, however, where land in trust had descended to the heiress of a trustee, and the heiress had died, and there was no personal representative, North, J., had, on appointing new trustees, made an order vesting in them the trust property "for all such estate as was vested in the deceased heiress-at-law" at her death (*In Re Williams' Trusts*, 36 Ch. D. 231; 36 W. R. 100). In that case the heir of the deceased trustee was also the heir of the testator, and was served with notice of the petition. That service seems to be necessary. *Gunson* v. *Simpson*, 5 L. R. Eq. 332.

Where the Crown is beneficially interested in part of the property, and that property is vested in it legally, an order vesting the property in new trustees cannot be made. *Re Pratt's Trusts*, 55 L. T., N. S. 313.

P. **1406**, *line* **2** *from bottom, after the word* "petition" *add:—*

Which should refer to the sections of the Acts under which the Court is asked to make the order. *Re Moss's Trusts*, 36 W. R. 316; *In re Hall's Settlement Trusts*, W. N. 1888, 16

P. **1407** (*m*), *add*:—

But consider *In re Platt*, W. N. 1887, 140.

(*q*), *add*:—

One by a trustworthy person is enough, and the costs of another may not be allowed. *In re Arden*, W. N. 1887, 166.

P. **1408** (*a*), *add*:—

The old practice which required an affidavit of the new trustee's consent to act still prevails in Lunacy, to which the above-mentioned order does not apply; but the new practice may be followed where the proceedings are in Chancery as well as Lunacy. *In re Hume*, 35 Ch. D. 457; 36 W. R. 84.

P. **1420** (*a*), *add*:— Power to compromise.

Re Bedingfield, 57 L. T., N. S. 332.

P. **1422**, *between lines* **11** *and* **12** *insert*:— Charges by solicitor trustee.

Very recently, in a case where the beneficiaries were all resident abroad, and the only person within the jurisdiction who was willing to become trustee was a person who had managed the property for many years and received payment for so doing, and would consent to become a trustee only upon the terms of being allowed afterwards to continue to receive the same commission as before, Mr. Justice Stirling appointed him on those terms jointly with two other persons resident out of the jurisdiction. *Re Freeman's Settlement Trusts*, 37 Ch. D. 148; 36 W. R. 71; 57 L. T., N. S. 798; see *Marshall* v. *Holloway*, 2 Sw. 432, 453.

P. **1430**, *after line* **20** *add*:— Indemnity of trustees.

Trustees of a voluntary settlement set aside under the Bankruptcy Act 1883, s. 47, on the bankruptcy of the settlor were allowed out of the fund costs incurred by them in successfully defending an action which had been brought by the settlor to set the settlement aside. *Ex-parte the Official Receiver, in re Holden*, 20 Q. B. D. 43; 36 W. R. 189. As to trustees' costs, charges and expenses, see also Treatise, 1382, and *Harvey* v. *Olliver*, stated above, for addition thereto.

P. **1445** (*g*), *add*:—

De Bensaude v. *De Bensaude*, 32 Sol. J. 42.

Separation deeds.

P. **1448.**

A husband's liability to pay for necessaries supplied to his wife, though living apart from him, when he has turned her out of doors without giving her any means of support, has been illustrated in a recent case. *Wilson* v. *Glossop*, 19 Q. B. D. 379; 20 *ib.* 254.

P. **1452**, *after line* **8** *from bottom add*:—

Allegation of a breach by a wife of a covenant in a separation deed not to molest her husband, in consequence of which alleged breach he stops a monthly payment he had by the same deed covenanted to make for her maintenance, does not preclude the Court from giving to her alimony of a like amount, pending an action by her for judicial separation. There is no danger, said Lindley, L.J., of the husband being compelled to pay twice over: the Court would not allow that injustice to be done. *Wood* v. *Wood*, 36 W. R. 33; 57 L. J. Ch. 1.

P. **1454.**

In a recent case it was urged by a husband's counsel that by executing a separation deed his wife had abandoned her right to a judicial separation, and that the deed was a complete accord and satisfaction for all that had gone before; but the deed not containing any covenant not to sue, or any expression pointing to condonation, Butt, J., held that the wife was entitled, by her husband's desertion of her, before the separation deed was executed, to judgment for judicial separation. *Moore* v. *Moore*, 12 P. D. 193; 36 W. R. 110; 57 L. T., N. S. 568.

Permanent maintenance.

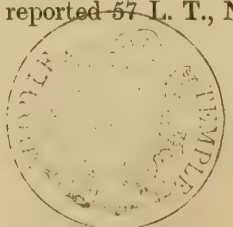
P. **1467**, *after line* **5** *add*:—

In the absence of special circumstances, such as that otherwise a provision for the wife cannot be secured, reversionary interests are not taken into account in allotting permanent maintenance. *Harrison* v. *Harrison*, 57 L. T., N. S. 119.

Variation of settlements on divorce.

P. **1471** (*c*).

Leeds v. *Leeds*, reported 57 L. T., N. S. 373.



P. **1493**, *after last paragraph add:—*

On a petition for variation of settlements after a decree for dissolution of marriage by reason of the wife's adultery,—a child having been born between the date of the decree *nisi* and decree absolute, and fourteen months after the wife had eloped from her husband,—the Court did not object to extinguish the life interest of each spouse in the settled funds which had been contributed by the other, but refused to transfer funds in settlement to the parties free from the trusts of the settlement, and also refused to order an inquiry into the legitimacy of the child. *Pryor* v. *Pryor and Shelford*, 12 P. D. 165 ; 57 L. T. 533.

P. **1537**, *at end of section, before period insert :—*

Avoidance of settlement by creditors.

That is to say, by supporting it against one entitled to impugn it. They may and should defend it against the settlor himself, if he have no good reason for setting it aside, although it may be void against the trustee in his subsequent bankruptcy. *Ex-parte the Official Receiver, In re Holden*, 20 Q. B. D. 43 ; 36 W. R. 189.

P. **1542**, *after line* **14** *add:—*

A settlement for value expressly subject to all existing charges was held not to avoid, under 10 Chas. I., sess. 2, c. 3 a prior voluntary charge by the settlor. *Blake* v. *Blake*, 19 L. R. I. 261.

P. **1547**, (*a*) (*c*) *:—*

Cf. *Ex-parte Todd, In re Ashcroft*, 19 Q. B. D. 186 ; 35 W. R. 676, where Lord Esher, M.R., adopted a statement attributed by him to Mathew, J., in *In re Player*, 15 Q. B. D. 682, with reference to B. A. 1883, s. 47, though I cannot find it in the report of that learned judge's judgment "that so much of a new enactment as is identical with a former enactment is applicable to matters taking place before the new enactment, but that any new portion of such enactment is not retrospective, and that that is the ordinary rule of construction." Lord Esher gave reasons for adhering to a decision which he said looked like a modification of the general rule that an Act is not retrospective unless it is so specially enacted. Fry, L.J., however, was clearly of opinion that s. 47 was not retrospective. Lopes, L.J., agreed on this point with the Master of the Rolls.

P. **1547**, *before line* **10** *from bottom insert* :—

A settlement void under this section against the trustee in the bankruptcy of the settlor may be valid for other purposes, and trustees of such a settlement have been allowed out of the fund costs incurred by them in successfully defending an action which had been brought by the settlor to set aside the settlement. *Ex-parte the Official Receiver, In re Holden*, 20 Q. B. D. 43; 36 W. R. 189.

Section 47 does not operate in avoidance of a voluntary settlement of a deceased person whose estate, proving to be insolvent, is administered in bankruptcy under s. 125 of the Bankruptcy Act 1883. *Ex-parte the Official Receiver, In re Gould*, 19 Q. B. D. 92; 35 W. R. 458, 569.

Rectification.

P. **1571**, *between lines* **17** *and* **18** *insert* :—

Mr. Justice Chitty recently objected to trying a rectification case upon affidavit evidence, and directed one of the principal witnesses to be examined in court. In his opinion, in an action for rectification of a settlement involving the interests of infants, it was not right for counsel to agree that the action should be heard on affidavit evidence. *Lawson* v. *Quare*, 32 Sol. J. 24.

P. **1574**, *line* **16**, *after reference letter* (*f*) *add* :—

Money in court, paid in by a public body who had bought land under its compulsory powers, was held to have been omitted by mistake from a settlement by the infant owner of the land, which settlement, as the draftsman was ignorant of the sale, purported to convey the land and not the money. *Mills* v. *Fox*, 37 Ch. D. 153; 36 W. R. 219; 57 L. T., N. S. 792.

P. **1575** (*i*).

Tucker v. *Bennett* has been reversed. W. N. 1887, 247.

P. **1577** (*b*).

Tucker v. *Bennett* has been reversed. W. N. 1887, 247.

Disentailing deeds.

P. **1587** (*e*).

See also 58 Geo. III., c. 45, s. 36, and 3 Geo. IV., c. 72, enabling tenants in tail to make conveyances for building or

enlarging churches, chapels, cemeteries, etc., which shall bar those estates and all other estates and incumbrances.

P. **1613.**

With reference to s. 36, see *Bankes* v. *Small* on appeal, 36 Ch. D. 716; 35 W. R. 765.

P. **1616** (*c*), *add* :—

Bankes v. *Small*, 34 Ch. D. 415, affirmed 36 *ib.* 716; 35 W. R. 288, affirmed *ib.* 765.

P. **1616** (*g*), *add* :—

Affirmed 36 Ch. D. 716; 35 W. R. 765.

P. **1628.**

With reference to 3 & 4 Will. IV., c. 74, s. 71, *add* :—

In a recent case it was argued by counsel, and assented to by the judge, that a disentailing deed of money, in order to be effectual, must be "an assignment by deed" and not a "grant." *Mills* v. *Fox*, 37 Ch. D. 153, 162; but query.

P. **1638** (*a*), *add* :—

De Stacpoole v. *De Stacpoole*, 37 Ch. D. 139; above, p. 244.

P. **1639**, *after paragraph ending line* **20** *from bottom add* :—

Father's agency for daughter in making settlement on her marriage.

A very important question relating to the constitution of marriage settlements was debated in a recent case. Upon the marriage of a lady aged twenty-two, and resident with her father, a sum of £1,070 Consols was so settled by her father as in the event of there being no issue of the marriage to give her a power of appointing it, but a covenant for the settlement of her after-acquired property required trusts under which, in default of issue, her next of kin were entitled. The property expected to be acquired was expected to be derived from the father, and he subsequently bequeathed a legacy on the trusts of the settlement. The settlement was prepared by her brother, a solicitor, after discussion with her father, but not with the intended wife herself. Sixteen years afterwards she brought an action for rectification, and Kekewich, J., gave judgment in her favour. The point of chief interest is that the learned judge did not admit in favour of the settlement as it stood the argument

that the father, being the natural guardian of the daughter, was the proper person to advise her; that he must be considered as having acted for her, and that she must be bound. He thought that a legal adviser or somebody competent to take his place should say whether the proposals or the way in which the proposals are carried out in the settlement are right and proper in the daughter's interests. In the case before the Court the brother, though he said he considered himself to be acting as the solicitor for his sister, also said he took his instructions from his father. Upon appeal it appears that the majority of the Court, Lords Justices Cotton and Lopes, differed from the court below upon this point, holding the father to be the natural agent of the daughter in preparing the settlement, and the employment of any other solicitor than the brother unnecessary. The full report of the case on appeal has not yet appeared. *Tucker* v. *Bennett*, 34 Ch. D. 754, W. N. 1887, 247. It will be noted that the fund to which the dispute related was derived from the father, by a gift made with reference to the settlement as originally framed, and did not relate to property to which the wife was entitled otherwise than from her father's bounty.

Conflict of laws.

P. **1642** (*f*), *add* :—

Barnard v. *White*, 56 L. T. 9.

P. **1644** (*e*), *at end add*:—

36 Ch. D. 269.

P. **1712**.

Under "words" *add* "from and after." *Andrew* v. *Andrew*, 1 Ch. D. 410.

NOTE II.

OBSERVATIONS UPON SOME BILLS BROUGHT INTO PARLIAMENT BUT NOT PASSED IN THE SESSION OF 1887.

AMONG the Bills which were brought into Parliament during the Session of 1887, but failed to pass, two related to the subject of Settlements. They were the Lord Chancellor's Land Transfer Bill, and a Bill to Amend the Law relating to Accumulations.

The Land Transfer Bill, 1887.

The chief part of the Lord Chancellor's Land Transfer Bill would, if it had become law, have affected that part of the law of settlements which relates to the method of bringing land into settlement, and is treated of in Chapter V., s. iii. of the Treatise; but the fact that the means by which land is conveyed for the purpose of settling it would be altered by the Bill, is no sufficient reason for making here any observation on so great a subject as the proposed change in the law relating to the conveyance and the preservation of title to landed property generally. In other respects only clauses 5, 39 (sub-clauses 1—4), 45, 46 and 47 (*a*), touch the subject of settlements.

Clause 5 contains in eight sub-clauses provisions for registration of settled land. They proceed upon the principle, adopted by Earl Cairns in the Settled Land Act 1882, of giving to the tenant for life of settled land full administrative dominion over it. Obviously no other course could have been taken unless there had first been an inquiry whether the experience already obtained of the consequences of taking that new departure in our law had shown it to be a wise one; and the result had proved so unfavourable as to suggest the propriety of changing the method adopted in the Settled Land Act itself. Still legislation touching the settlement of land should not be proposed or adopted without recollecting the two great objections to Earl Cairns' gift of such great power to a tenant for life: first,

(*a*) These numbers refer to the clauses in the amended bill as sent to the House of Commons.

that it selects as the donee of fiduciary authority a person who in the judgment of the Courts of Equity is by his interest in the subject-matter disqualified for the office; and, secondly, that the tenant for life may, in consequence of lunacy, imbecility, or absence from the country, be incompetent to exercise the powers needed to be exercised for the good management of the property, while he cannot, as an incompetent trustee can, be replaced by one able to discharge his duties. Moreover, in connection with the same point it seems proper, in framing any measure for the registration of title, to consider whether—as, if I recollect aright, was long since suggested by Mr. Whitcombe—the better method of dealing with settled land is not to require the legal estate in fee to be vested in trustees who may be registered as and permitted to deal with the land as absolute owners. The several beneficial estates and interests in the land would be as safe as those of the beneficiaries under a settlement of personalty.

In clause 39 the sub-clause (1) (*d*) proposed to declare that any husband or wife surviving the other spouse and becoming by virtue of a previous part of the clause entitled to an interest for life in land belonging to that other spouse of which she or he should die intestate, should be a tenant for life within the meaning of the Settled Land Act 1882, and that until trustees of the settlement were appointed, the personal representatives of the intestate should be trustees of the settlement. Later sub-clauses proposed to abolish tenancy by the curtesy, dower, and freebench.

By clauses 45 and 46 it was proposed to enlarge existing estates tail and to prohibit their future creation. Upon these proposals I have already ventured to make some observations in the Preface to the Treatise (pp. vii—xi).

Clause 47 contained the provisions which, with some verbal emendations and some slight additions, were ultimately embodied in a separate bill and passed into law, being the Act to amend the Settled Land Act 1882, of which a copy is printed above (p. 262).

Bill to amend the law relating to accumulations.

A few years since a tenant farmer gave by his will a sum of £3,000 to trustees upon trusts intended to secure the application of the yearly produce of the fund to the maintenance of a niece of testator and her younger children during her life. The rest of his property he subjected to a trust for accumulation during twenty years after his death, and then directing

its investment in land, settled it as such, together with, after the niece's death, the £3,000, on the eldest son of the same niece for life, with remainder over. The eldest son of the niece having attained twenty-one when barely seven of the twenty years had elapsed, applied to the Court for an order that the trustees might be at liberty to pay or apply £300 a year for his maintenance and education, he wishing to become a solicitor. The late Mr. Justice Pearson, by whom the summons was heard, did not see how he could help the plaintiff, and prefaced his judgment dismissing the summons with the remark: "I am strongly opposed to all these trusts for accumulation of income: I think they are always mischievous; at the same time they are legal" (*In re Alford*, 32 Ch. D. 386). Or, according to another report: "I am strongly opposed to all trusts for the accumulation of income. Unfortunately the law allows a man to accumulate the income of his property within certain limits. According to my experience his doing so is always more or less mischievous." (34 W. R. 774.)

These observations are said (31 S. J. 492) to have suggested the introduction by Messrs. Cozens-Hardy, Bryce, and Haldane nto the House of Commons last session of a "Bill to Amend the Law relating to Accumulations," prohibiting in future dispositions of property in such manner that the rents, issues, profits or income thereof should be wholly or partially accumulated for any longer term than during the minority or respective minorities only of any person or persons who under the uses or trusts of the instrument directing such accumulations, would for the time being, if of full age, be entitled to receive the rents, issues, profits, or income so directed to be accumulated.

The Bill passed the House of Commons; but, so far as appears from Hansard, without debate other than a general approval of the measure by the Attorney-General, Sir Richard Webster, and a question by Mr. Healy whether it applied to Ireland; and it was afterwards, on the motion of Lord Herschell, read a first time in the House of Lords, but the order for the second reading was discharged, nor does Hansard report any debate on the Bill in the Upper House. The reasons, therefore, if any, which were adduced to the Legislature in opposition to the Bill are not publicly known. On the other hand, those in favour of it are only presumed to be authoritatively expressed by the above-cited observations of the late Sir John Pearson. To any

opinion of that learned judge great deference is due, and especially to one which he states as the result of his experience in matters in which his experience had probably been large, and with reference to which he must have exercised with his customary care his great judicial power.

We have, therefore, as presumably the basis of the proposed change in the law, an opinion of great authority to the effect, according to one report, that a direction to accumulate income "is always more or less mischievous." What in this sentence surprises the reader is the word "always"; and when the bill, which is supposed to have been intended to give effect to the learned judge's opinion, is looked at, it is found not to prohibit accumulation always, but only during all other periods than certain specified minorities. The framers of the bill probably considered, and if so it cannot be doubted they considered rightly, that Sir John Pearson's "always" was subject in his mind to the exception which they proposed to make from the prohibition in their bill. If, however, Mr. Justice Pearson's opinion is found to have been expressed in such terms that certain qualifications of it must be implied in it, we must consider carefully whether it ought in all other respects to be accepted as entitled to the universal scope it appears to claim; and upon entering on that consideration the first point which occurs is that every observation of a judge made in justifying his decision needs to be considered with reference to the facts of the case before him. In that before Sir J. Pearson a testator had made dispositions of his property which the learned judge thought, and probably most people would have agreed with him, in thinking foolish and mischievous. The dispositions in another recent case (*Havelock* v. *Havelock*, 17 Ch. D. 807), which was cited in *Re Alford*, probably seemed to him equally objectionable. A particular class of cases in which directions to accumulate had worked mischievously had been presented to the judge's mind, and it was with reference to that class that his observations were at least especially and primarily directed; and it cannot be inferred from his use of universal terms in describing his disapprobation, that he would have favoured a universal statutory prohibition of accumulation.

A writer already cited (31 S. J. 492) has pointed out the not uncommon desire of testators to defer the vesting of some legacies with the interest on them until some few years after the legatee has attained his majority—as, for instance, until he

has attained the age of twenty-five—and that not so much in order to increase the magnitude of the legacy by accumulation as to postpone its enjoyment until the legatee may be expected to be more competent to use it wisely. Is such a desire necessarily unwise? Is its accomplishment most likely to be in every case or most cases mischievous?

To take another example: suppose the owner of an estate worth £50,000, charged with a mortgage for £20,000 (see *Re Fitzgerald*, 37 Ch. D. 18), or the owner of a business of like value and similarly charged, gives the mortgaged property to his son aged ten, would it be unwise and mischievous for him to make such a disposition of his property as that during twenty-one years such an accumulation of rents should be made as would suffice to pay off the charge? Is accumulation necessarily detrimental to the wealth of the nation? Adam Smith preferred a miser to a spendthrift.

The terms of the bill appear to have been such as to have precluded the creation of any sinking fund, and would probably have seriously interfered with the business of insurance companies. It appears to constitute a signal instance of the risk of attempting, by the prohibition of acts which may be in some cases beneficial and in others pernicious, to preclude the possibility of the occasional abuse of the liberty to do them. Such attempts strike at the root of the right to own and to dispose of property at all, since that right must be grounded in the belief that notwithstanding its frequent abuse the possession of property and the power of disposing of it can most advantageously to the commonwealth be conceded to individual members of the community.

POSTSCRIPT.—Since the above-printed note was put in type bills corresponding with those commented on have been again introduced into Parliament. In the new Land Transfer Bill clauses 58, 71 and 72, and 77 and 78 replace clauses 5, 38 and 39, and 45 and 46 of the Bill of 1887. The new clauses vary from the old ones, but the remarks above made with reference to the Bill of 1887 appear to be applicable to that of 1888. The new Accumulations Bill is like its predecessor, with the addition of a saving of provisions for payment of debts and keeping up policies of assurance, which meets some of the particular objections to the Bill of last year.

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